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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2014 JUN 20 P 4:06

Arizona Corporation Commission

DOCKETED

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

JUN 20 2014

DOCKETED BY

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In the matter of:

Catharon Software Corporation, a
Delaware corporation,

Betsy A. Feinberg and Michael A.
Feinberg, husband and wife,

Respondents.

DOCKET NO. S-20905A-14-0061

**SECURITIES DIVISION'S
MOTION FOR STATUS
CONFERENCE REGARDING
SUBPOENA ENFORCEMENT
ACTION**

The Securities Division of the Arizona Corporation Commission ("Commission") respectfully requests that the Administrative Law Judge schedule a status conference at the earliest convenient date to discuss the subpoena enforcement action that the Securities Division filed on June 11, 2014, in the Superior Court pursuant to A.R.S. § 44-1825(A).¹ The subpoena enforcement action is captioned *Arizona Corporation Commission v. Catharon Software Corporation*, Maricopa County Superior Court Case No. CV2014-008856 (filed 6/11/14). A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

This request for a status conference comes to comply with the directive of the Honorable David O. Cunanan of the Maricopa County Superior Court to have such a

¹ A.R.S. § 44-1825(A) provides: "In case of contumacy or refusal to obey a subpoena or citation issued by the commission, any member of the commission, the director or any officer designated by the commission, the superior court in Maricopa county, on application by the commission, shall issue to the person an order requiring the person to appear before the commission, the director or the officer designated by the commission to produce documentary evidence if so ordered and to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court."

1 status conference. Specifically, on Thursday afternoon, June 19, 2014, Judge
2 Cunanan ordered the parties to have a conference with the Administrative Law Judge
3 to see if the parties can agree to resolve the issue in the subpoena enforcement action
4 pending before Judge Cunanan. Judge Cunanan acknowledged that he, and not the
5 Administrative Law Judge, has the jurisdiction to decide and resolve the subpoena
6 enforcement action. Nonetheless, Judge Cunanan directed the parties to appear
7 before the Administrative Law Judge during the weeks of June 23-27 or June 30-July
8 3, 2014.

9 **MEMORANDUM IN SUPPORT OF MOTION**

10 On January 3, 2014, the Securities Division issued three Subpoenas Duces
11 Tecum for the production of documents to the Custodian of Records for Catharon
12 Software Corporation ("Catharon"), Michael A. Feinberg, and Betsy A. Feinberg.
13 The January 3, 2014 Subpoena Duces Tecum served on Catharon's Custodian of
14 Records required the Custodian to appear in person on January 27, 2014, and
15 produce Catharon's corporate business records and certain other information. In lieu
16 of appearing in person, the Securities Division's cover letter accompanying the
17 Subpoena Duces Tecum permitted the Custodian to submit an Affidavit of Custodian
18 of Records along with the responsive documents by the due date.

19 On January 27, 2014, Catharon made a partial document production, which
20 included an Affidavit of Custodian of Records stating it was executed by Michael A.
21 Feinberg.

22 On February 13, 2014, the Securities Division and Catharon's counsel agreed:
23 (1) Catharon would complete its document production in response to the Subpoena
24 Duces Tecum by February 25, 2014; and (2) the Division would take the
25 examination under oath ("EUO") of Betsy Feinberg, Michael Feinberg, and
26 Catharon's Custodian of Records on March 4, 2014. The Division subsequently

1 served a Subpoena dated February 24, 2014, on Catharon's Custodian of Records
2 requiring the Custodian to appear and testify at the EUO on March 4, 2014.

3 On February 25, 2014, Catharon's Custodian of Records, Michael A. Feinberg
4 and Betsy A. Feinberg produced additional documents in response to the Subpoena
5 Duces Tecum. The February 25th production did not include an Affidavit from
6 Catharon's Custodian of Records.

7 On February 26, 2014, the Securities Division filed a Temporary Cease and
8 Desist Order and Notice of Opportunity for Hearing ("TC&D") with the Commission
9 against Catharon, and Mr. and Mrs. Feinberg.²

10 On March 4, 2014, Mr. and Mrs. Feinberg appeared for their examinations
11 under oath with their counsel. Mr. and Mrs. Feinberg pled their respective Fifth
12 Amendment privileges against self-incrimination in response to every substantive
13 question from the Division.

14 The Division then called Catharon's Custodian of Records to be examined
15 under oath pursuant to the Subpoena for testimony dated February 24, 2014.
16 Catharon designated Mr. Feinberg for the Custodian of Records examination. Mr.
17 Feinberg, however, asserted a privilege against self-incrimination based on the Fifth
18 Amendment. He refused to answer questions as Catharon's Custodian. Catharon's
19 counsel stated that Mr. Feinberg disavowed and was revoking the Affidavit of
20 Custodian of Records that Catharon provided with its document production on
21 January 27, 2014.

22 Counsel for the Division and Catharon have discussed several times in person
23 and through exchanges of correspondence whether it is improper for Catharon's
24 Custodian of Records (as opposed to Mr. and Mrs. Feinberg individually) to refuse to

25
26 ² On June 2, 2014, the Securities Division filed an Amended Temporary Cease and Desist
Order and Notice of Opportunity for Hearing with the Commission against Catharon, and
Mr. and Mrs. Feinberg.

1 answer questions. *See Bellis v. United States*, 417 U.S. 85, 100 (1974) (“[The law] is
2 well settled that no [Fifth Amendment] privilege can be claimed by the custodian of
3 corporate records....”). Further, the Division proposed that Catharon appoint an
4 alternate custodian of records to testify regarding Catharon’s document production if
5 Mr. or Mrs. Feinberg cannot do so without incriminating themselves. *See In Re Two*
6 *Grand Jury Subpoenas Duces Tecum*, 769 F.2d 52, 57 (2nd Cir. 1985) (if a
7 corporation’s custodian of records would incriminate himself if he were to act to
8 produce the company’s records, “[T]he corporation must appoint some other
9 employee to produce the records, and if no existing employee could produce records
10 without incriminating himself by such an act, then ***the corporation may be required***
11 ***to produce the records by supplying an entirely new agent who has no previous***
12 ***connection with the corporation....***) (emphasis added). Catharon’s counsel rejected
13 the Division’s proposal that Catharon appoint an alternate custodian of records to
14 testify.

15 In lieu of providing a Custodian of Records who will testify regarding
16 Catharon’s document production, Catharon’s counsel has offered to stipulate that the
17 records Catharon and Mr. and Mrs. Feinberg produced in response to the three
18 Subpoenas Duces Tecum dated January 3, 2014, can be admitted into evidence in
19 this administrative proceeding without any authentication or evidentiary foundation.
20 The proffered stipulation is unsatisfactory and unacceptable to the Securities
21 Division for several reasons, including:

- 22 1. Respondents’ proffered stipulation does not address whether
23 Catharon has fully complied with the Subpoena Duces Tecum. In his EUO
24 as Catharon’s designated Custodian of Records, Michael A. Feinberg
25 invoked the Fifth Amendment in response to questions as to whether
26 Catharon failed to produce documents responsive to the Subpoena Duces

1 Tecum. Based on that assertion of the Fifth Amendment, a negative
2 inference arises that Catharon has failed to produce documents responsive
3 to the Subpoena Duces Tecum. *See, e.g., Curtis v. M&S Petroleum, Inc.*,
4 174 F.3d 661, 674 (5th Cir. 1999) (allowing adverse inference to be drawn
5 against corporate defendant whose designated representative invoked the
6 Fifth Amendment).

7 2. As part of its broad statutory mandate to conduct investigations
8 and enforce the Arizona Securities Act, the Securities Division has the
9 authority to “subpoena witnesses, take evidence and require by subpoena
10 duces tecum ... the production of books, papers, contracts, agreements or
11 other documents, records or information ... which the commission deems
12 relevant or material to the inquiry.” A.R.S. § 44-1823(A). Respondents’
13 proffered stipulation seeks to compromise the Securities Division’s
14 statutory authority to subpoena witnesses and take evidence. The Securities
15 Division does not have to settle for unauthenticated and incomplete
16 documents that lack foundation.

17 3. The Securities Division also has the authority to transmit the
18 evidence it obtains through its subpoena power to other law enforcement
19 agencies for their use. *See* A.R.S. § 44-2032(5) (“[T]he commission may,
20 in its discretion ... [t]ransmit any evidence available concerning the act,
21 practice or transaction to a county attorney, the attorney general or the
22 United States attorney who may, with or without the transmittal, directly
23 institute or cause to be instituted any criminal proceedings as the evidence
24 warrants.”). Respondents’ proffered stipulation would eliminate the
25 Securities Division’s ability to transmit useable evidence, i.e. authenticated
26 corporate business records, to other law enforcement agencies.

1 4. Respondents' proffered stipulation, if accepted by the Securities
2 Division, would set a bad precedent that the defense bar would invoke in
3 future cases to complicate and undermine investigations and enforcement
4 proceedings against corporate entities.

5 Accordingly, the Securities Division declined the offer by Catharon's counsel
6 to stipulate to the admissibility of the records in this administrative proceeding
7 despite the lack of any authentication or evidentiary foundation.

8 On June 11, 2014, the Securities Division filed a Complaint for subpoena
9 enforcement in the Maricopa County Superior Court pursuant to A.R.S. §
10 44-1825(A). *See* **Exhibit A**.

11 On June 12, 2014, the Maricopa County Superior Court issued an Order to
12 Show Cause requiring Catharon to appear on June 19, 2014 before Judge Cunanan
13 for a return hearing. A true and correct copy of the Order to Show Cause is attached
14 hereto as **Exhibit B**.

15 On June 18, 2014, Catharon filed a Motion to Dismiss the subpoena
16 enforcement action. A true and correct copy of the Motion to Dismiss is attached
17 hereto as **Exhibit C**.

18 At the return hearing on June 19, 2014, Catharon's counsel argued that the
19 Securities Division should accept the offer to stipulate to the admissibility of the
20 records in this administrative proceeding without any authentication or evidentiary
21 foundation. Catharon's counsel also asked Judge Cunanan to transfer the subpoena
22 enforcement action to the Administrative Law Judge for decision. Judge Cunanan
23 stated that he would not transfer the action because under the applicable statutes,
24 only the Superior Court, not the Administrative Law Judge, has the jurisdiction to
25 decide the subpoena enforcement action. *See* A.R.S. § 44-1825(A).

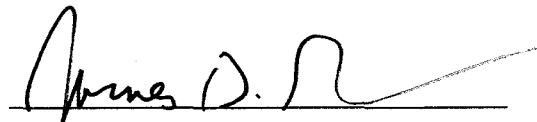
1 Judge Cunanan did, however, order the parties to have a conference with the
2 Administrative Law Judge to see if the parties can agree to resolve the issue in the
3 subpoena enforcement action. Judge Cunanan directed the parties to appear before
4 the Administrative Law Judge during the weeks of June 23-27 or June 30-July 3,
5 2014.

6 Judge Cunanan stated that if the parties are unable to resolve their dispute
7 during the conference with the Administrative Law Judge he (Judge Cunanan) will
8 decide Catharon's Motion to Dismiss and the subpoena enforcement action. Judge
9 Cunanan set a two-hour hearing in the subpoena enforcement action for August 1,
10 2014 at 10:00 a.m.

11 CONCLUSION

12 For the reasons stated above, the Securities Division respectfully requests that
13 the Administrative Law Judge schedule a status conference at the earliest convenient
14 date to discuss the subpoena enforcement action.

15 Respectfully submitted this 20th day of June, 2014.

16
17
18 
19 James D. Burgess
20 Counsel for the Securities Division
21
22
23
24
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26

1 ORIGINAL and 8 copies of the foregoing
2 Motion for Status Conference filed
3 this 20th day of June, 2014, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, AZ 85007

8 COPY of the foregoing hand-delivered
9 this 20th day of June, 2014, to:

10 The Honorable Mark H. Preny
11 Administrative Law Judge
12 Arizona Corporation Commission
13 1200 W. Washington St.
14 Phoenix, AZ 85007

15 COPIES of the foregoing sent via
16 Email and U.S. Mail this
17 this 20th day of June, 2014, to:

18 Bruce R. Heurlin
19 Thomas C. Piccioli
20 Heurlin Sherlock
21 1636 N. Swan Road, Suite 200
22 Tucson, AZ 85712
23 bheurlin@aztoplawyers.com
24 tpiccioli@aztoplawyers.com
25 Attorneys for Catharon Software Corporation,
26 Betsy A. Feinberg and Michael A. Feinberg

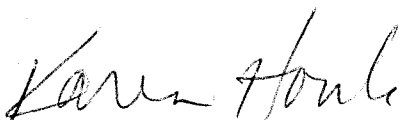


Exhibit A

1 **ARIZONA CORPORATION COMMISSION**

2 James D. Burgess (Bar No. 014978)
1300 West Washington Street, 3rd Floor

3 Phoenix, Arizona 85007

4 Tel: (602) 542-0171

5 Fax: (602) 714-8120

6 Email: jburgess@azcc.gov

7 Attorney for Plaintiff

COPY

JUN 11 2014



MICHAEL K. JEANES, CLERK
J. FIERRO
DEPUTY CLERK

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **COUNTY OF MARICOPA**

10 ARIZONA CORPORATION COMMISSION,)

11 Plaintiff,)

12 v.)

13 CATHARON SOFTWARE CORPORATION, a)
Delaware Corporation,)

14 Defendant.)

Case No. CV 2014-008856

COMPLAINT

SUBPOENA ENFORCEMENT ACTION

15
16 Pursuant to Article 15, Section 4 of the Arizona Constitution and A.R.S. §§ 44-1822, 44-
17 1823(A), and 44-1825(A) & (C), the Arizona Corporation Commission ("Commission") requests
18 this Court to order Defendant Catharon Software Corporation ("Catharon") to produce its
19 Custodian of Records to appear before the Commission or any officer designated by the
20 Commission and give evidence by testifying regarding Catharon's document production in
21 response to the Subpoena Duces Tecum the Commission served on it dated January 3, 2014.

22 Pursuant to A.R.S. § 44-1825(C), the Commission also respectfully requests that the Court
23 order Catharon to reimburse the Commission for its reasonable expenses, including attorneys' fees,
24 incurred in having to bring this action. The refusal of Catharon's Custodian of Records to testify
25 regarding the corporate documents Catharon produced is not substantially justified and is contrary
26 to well-established law.

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I.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Arizona Corporation Commission is a governmental entity charged, pursuant to Article 15 of the Arizona Constitution, with enforcing the Securities Act of Arizona, codified at A.R.S. §§ 44-1801 through 44-2126 ("Securities Act").

2. Defendant Catharon Software Corporation is a corporation organized under the laws of the State of Delaware. Since at least March 25, 2002, Catharon has been conducting business within or from Arizona.

3. Catharon has engaged in conduct in Maricopa County, and other counties within Arizona, that give rise to this action.

4. Jurisdiction and venue are proper in this Court and County pursuant to A.R.S. §§ 44-1825(A) and 44-2031.

II. THE INVESTIGATORY SUBPOENAS

5. The Securities Division of the Commission opened an investigation to determine whether Catharon, its Chief Executive Officer, Betsy A. Feinberg, and its President and Treasurer, Michael A. Feinberg, have complied with the Securities Act.

6. Upon information and belief, at all times relevant to the Securities Division's investigation Michael A. Feinberg ("Mr. Feinberg") and Betsy A. Feinberg ("Mrs. Feinberg") have been a married couple and resided in Arizona.

7. On January 3, 2014, the Securities Division issued three Subpoenas Duces Tecum for the production of documents to the Custodian of Records for Catharon, Mr. Feinberg, and Mrs. Feinberg. On January 4, 2014, the Securities Division served those Subpoenas Duces Tecum via certified mail on Catharon, and Mr. and Mrs. Feinberg. See Affidavit of James D. Burgess ("Burgess Aff."), attached hereto as **Exhibit 1**, at ¶¶ 3-4. A true and correct copy of the Subpoena Duces Tecum to Catharon's Custodian of Records is attached hereto as **Exhibit 2**.

8. The January 3, 2014 Subpoena Duces Tecum served on Catharon's Custodian of Records required the Custodian to appear in person on January 27, 2014, and produce Catharon's

1 corporate business records and certain other information specified in Exhibit A to the Subpoena
2 Duces Tecum. *See Exhibit 2.*

3 9. In lieu of appearing in person, the Securities Division's cover letter accompanying
4 the Subpoena Duces Tecum permitted the Custodian to submit an Affidavit of Custodian of
5 Records along with the responsive documents by the due date. *See Exhibit 2.*

6 10. On January 16, 2014, attorney Tanya Miller informed the Securities Division that
7 she and her law firm, Gabroy, Rollman & Bosse, P.C., represented Catharon with respect to the
8 Subpoena Duces Tecum directed to its Custodian of Records. Ms. Miller stated that her firm did
9 not represent Mr. or Mrs. Feinberg. **Exhibit 1** [Burgess Aff.] at ¶ 5.

10 11. At Ms. Miller's request, and in exchange for her agreement that Catharon's
11 Custodian would make a partial document production on January 27, 2014, the Securities Division
12 granted an extension to February 14, 2014, for the Custodian to complete Catharon's response to
13 the Subpoena Duces Tecum. **Exhibit 1** [Burgess Aff.] at ¶ 6.

14 12. On January 27, 2014, Catharon made a partial production consisting of: (i)
15 documents bates labeled as CSC00001 to CSC00166; (ii) a letter from Ms. Miller asserting
16 objections to the Subpoena Duces Tecum, a true and correct copy of which is attached hereto as
17 **Exhibit 3**; and (iii) an Affidavit of Custodian of Records stating it was executed by Mr. Feinberg, a
18 true and correct copy of which is attached hereto as **Exhibit 4**.

19 13. Although Ms. Miller's January 27th letter accompanying the Custodian's document
20 production contained numerous objections, it did not assert any Fifth Amendment privilege or
21 objection on self-incrimination grounds. *See Exhibit 3.*

22 14. Neither Mr. Feinberg nor Mrs. Feinberg produced any documents or otherwise
23 responded to the Subpoenas Duces Tecum directed to them dated January 3, 2014. **Exhibit 1**
24 [Burgess Aff.] at ¶ 8.

25 15. On February 13, 2014, attorney Bruce Heurlin informed the Securities Division that
26 Catharon and Mr. and Mrs. Feinberg had engaged his law firm, Heurlin Sherlock P.C., to represent
them with respect to the Subpoenas Duces Tecum dated January 3, 2014. Mr. Heurlin stated that

1 Ms. Miller and her law firm would no longer be representing Catharon. *See* letter dated February
2 13, 2014 from J. Burgess to B. Heurlin, a true and correct copy of which is attached hereto as
3 **Exhibit 5**. Ms. Miller subsequently confirmed that her firm no longer represented Catharon.
4 **Exhibit 1** [Burgess Aff.] at ¶¶ 9-10.

5 16. Mr. Heurlin requested, and the Securities Division granted, a further extension to
6 February 25, 2014, for the Custodian to complete Catharon's response to the Subpoena Duces
7 Tecum. The Securities Division also granted Mr. and Mrs. Feinberg until February 25th to respond
8 to the Subpoenas Duces Tecum directed to them. *See* **Exhibit 5**.

9 17. On February 13, 2014, counsel for the Securities Division and Mr. Heurlin also
10 discussed that the Securities Division would take the examinations under oath of Mr. Feinberg,
11 Mrs. Feinberg, and Catharon's Custodian of Records. Mr. Heurlin offered March 4, 2014, as the
12 date for those examinations. *See* **Exhibit 5**.

13 18. On February 20, 2014, Mr. Heurlin emailed the Securities Division and stated with
14 respect to Catharon, "There is no official custodian of records and the Feinbergs perform that role."
15 A true and correct copy of Mr. Heurlin's email is attached hereto as **Exhibit 6**.

16 19. The Securities Division subsequently served Subpoenas dated February 24, 2014, on
17 Catharon's Custodian of Records and Mr. and Mrs. Feinberg requiring them to appear and testify
18 on March 4, 2014. A true and correct copy of the Subpoena for testimony to Catharon's Custodian
19 of Records is attached hereto as **Exhibit 7**.

20 20. On February 25, 2014, Catharon's Custodian of Records and Mr. and Mrs. Feinberg
21 produced 13,090 pages of documents in response to the Subpoenas Duces Tecum dated January 3,
22 2014. *See* letter dated February 25, 2014 from B. Heurlin to J. Burgess, a true and correct copy of
23 which is attached hereto as **Exhibit 8**. Neither the Custodian nor the Feinbergs asserted any Fifth
24 Amendment privilege or other objections in connection with that production. *See* **Exhibit 8**.

25 21. The 2013 Business Plan Catharon provided to investors states that Catharon has 10
26 employees and has raised over \$6 million. Documents Catharon produced to the Securities
Division indicate that it has approximately 340 shareholders. *See* **Exhibit 1** [Burgess Aff.] at ¶ 16.

1 22. On February 26, 2014, the Securities Division filed a Temporary Cease and Desist
2 Order and Notice of Opportunity for Hearing ("TC&D") with the Commission against Catharon,
3 and Mr. and Mrs. Feinberg. A true and correct copy of the TC&D is attached as **Exhibit 9**. The
4 TC&D alleges that Catharon and the Feinbergs violated the registration and anti-fraud provisions
5 of the Securities Act. *See* **Exhibit 9**.

6 23. On March 4, 2014, Mr. and Mrs. Feinberg appeared for their examinations under
7 oath with their counsel, Mr. Heurlin. Mr. and Mrs. Feinberg pled their respective Fifth
8 Amendment privileges against self-incrimination in response to every substantive question from
9 the Securities Division. **Exhibit 1** [Burgess Aff.] at ¶ 23.

10 24. The Securities Division then called for Catharon's Custodian of Records to be
11 examined under oath pursuant to the Subpoena for testimony dated February 24, 2014. **Exhibit 1**
12 [Burgess Aff.] at ¶ 24.

13 25. Catharon designated Mr. Feinberg for the Custodian of Records examination. Mr.
14 Feinberg, however, asserted a privilege against self-incrimination based on the Fifth Amendment to
15 the United States Constitution. He refused to answer questions as Catharon's Custodian. *See*
16 Transcript of Examination Under Oath of Michael Feinberg, Custodian of Records of Catharon
17 Software Corporation dated March 4, 2014, a true and correct copy of which is attached hereto as
18 **Exhibit 10**.

19 26. Mr. Heurlin stated that Mr. Feinberg disavowed and was revoking the Affidavit of
20 Custodian of Records that Catharon provided with its document production on January 27, 2014.
21 **Exhibit 10** at 5:16-18.

22 27. Counsel for the Securities Division discussed with Mr. Heurlin that there is no legal
23 basis for Catharon, as a corporation, to assert a Fifth Amendment privilege. Counsel further
24 discussed that it is improper for Catharon's Custodian of Records to obstruct the Division's
25 investigation based on a privilege Mr. Feinberg is not entitled to assert in his role as the Custodian.
26 **Exhibit 10** at 5:23 to 6:19.

1 28. Mr. Heurlin responded that Mr. Feinberg “denies the role as custodian of records.”
2 **Exhibit 10** at 6:20-21.

3 29. Counsel for the Securities Division warned that the Division might bring an action
4 to enforce the Subpoena for testimony from Catharon’s Custodian of Records and seek attorneys’
5 fees and costs. **Exhibit 10** at 6:7-10.

6 30. The Securities Division proceeded with the examination, but Mr. Feinberg, as
7 Catharon’s designated Custodian of Records, refused to answer every substantive question,
8 including:

- 9 a. whether he is Catharon’s authorized Custodian of Records;
- 10 b. whether he had the authority to certify Catharon’s records;
- 11 c. whether he had signed the Affidavit of Custodian of Records that Catharon
12 provided with its document production on January 27, 2014;
- 13 d. whether the documents Catharon produced on January 27th and February 25th
14 were all the records it has that are responsive to the Subpoena Duces Tecum;
15 and
- 16 e. whether Catharon has failed to produce any records covered by the
17 Subpoena Duces Tecum.

18 **Exhibit 10** at 5:20 to 11:20.

19 31. On March 7, 2014, counsel for the Securities Division wrote to Catharon’s counsel
20 in an effort to avoid having to bring this action to enforce the Subpoena for testimony from
21 Catharon’s Custodian of Records. *See* letter dated March 7, 2014 from J. Burgess to B. Heurlin, a
22 true and correct copy of which is attached hereto as **Exhibit 11**.

23 32. The Securities Division’s letter provided legal authorities demonstrating that there is
24 no basis for Catharon to assert a Fifth Amendment privilege, and that it is improper for Catharon’s
25 Custodian of Records to refuse to answer questions. *See, e.g., Bellis v. United States*, 417 U.S. 85,
26 100 (1974) (“It is well settled that no [Fifth Amendment] privilege can be claimed by the custodian
of corporate records, regardless of how small the corporation may be.”); *Braswell v. United States*,

1 487 U.S. 99, 113 (1988) (“A custodian may not resist a subpoena for corporate records on Fifth
2 Amendment grounds.”); *United States v. Milligan*, 371 F. Supp.2d 1127, 1129-30 (D. Ariz. 2005)
3 (same).

4 33. In response to the Securities Division’s March 7th letter, Catharon’s counsel, Mr.
5 Heurlin, asserted, “Catharon did not conduct business as a ‘corporation’ Catharon operated as
6 a proprietorship.” See letter dated March 13, 2014 from B. Heurlin to J. Burgess, a true and correct
7 copy of which is attached hereto as **Exhibit 12**.

8 34. Catharon’s counsel also asserted, “There is no custodian of records for Catharon
9 because no person ever undertook those duties and obligations. Michael Feinberg is not
10 Catharon’s custodian of records.” **Exhibit 12**. That assertion is directly contrary to Mr. Feinberg’s
11 Affidavit of Custodian of Records dated January 27, 2014, in which he testified under oath: “I am
12 the duly authorized Custodian of Records of Catharon Software Corporation.” **Exhibit 4**.

13 35. The assertion that “[t]here is no custodian of records for Catharon because no
14 person ever undertook those duties and obligations,” is also directly contrary to the prior statements
15 by Catharon’s counsel that: (i) Mr. and Mrs. Feinberg perform the role of custodian of records for
16 Catharon, see **Exhibit 6**; and (ii) the documents Catharon produced on February 25, 2014 “are
17 produced by the custodian of records of Catharon Software Corporation....” **Exhibit 7**.

18 36. On March 14, 2014, Catharon, and Mr. and Mrs. Feinberg filed an Answer to the
19 TC&D, a true and correct copy of which is attached as **Exhibit 13**. Their Answer admits the
20 allegation that Catharon “is a corporation organized under the laws of the State of Delaware....”
21 **Exhibit 9 (TC&D)** at ¶ 2; **Exhibit 13 (Answer)** at ¶ 2

22 37. On March 20, 2014, counsel for the Securities Division again wrote to Catharon’s
23 counsel. See letter dated March 20, 2014 from J. Burgess to B. Heurlin, a true and correct copy of
24 which is attached hereto as **Exhibit 14**.

25 38. The Securities Division’s March 20th letter listed numerous facts demonstrating that
26 Catharon operated as a corporation and not as an unincorporated proprietorship, including:

- a. The admission in the Answer by Catharon, and Mr. and Mrs. Feinberg that Catharon "is a corporation organized under the laws of the State of Delaware....";
- b. The Delaware Secretary of State's records contain a Certificate of Incorporation for Catharon dated March 8, 2002, stating that the corporation has authorized 20 million shares of stock;
- c. Catharon has over 340 shareholders according to the "Catharon Software Corporation Stock Ledger" it produced on February 25, 2014;
- d. Catharon filed federal corporate tax returns each year from 2002 through 2011 using Internal Revenue Service Form 1120 - "U.S. Corporation Income Tax Return." Mr. Feinberg signed Catharon's federal corporate tax returns under the penalty of perjury;
- e. Catharon filed Delaware tax returns as a corporation each year from at least 2005 through 2012. Mr. Feinberg signed Catharon's Delaware corporate tax returns under the penalty of perjury; and
- f. According to documents Catharon produced, purportedly on March 24th of each year from 2003 to 2013, Mr. and Mrs. Feinberg executed a "Written Consent of a Majority of Shareholders of Catharon Software Corporation in lieu of the Annual Shareholder Meeting." Each March 24th from 2003 to 2013, they elected themselves and their daughter, Jessica Feinberg, to serve as Catharon's corporate Directors.

39. The Securities Division proposed that Catharon appoint an alternate custodian of records to testify regarding Catharon's document production if Mr. or Mrs. Feinberg cannot do so without incriminating themselves. The proposal is consistent with well-established law and procedure. As the Second Circuit explained, if a corporation's custodian of records would incriminate himself if he were to act to produce the company's records,

1 [T]he corporation must appoint some other employee to produce the records,
2 and if no existing employee could produce records without incriminating
3 himself by such an act, then *the corporation may be required to produce the*
4 *records by supplying an entirely new agent who has no previous connection*
5 *with the corporation....*

6 *In Re Two Grand Jury Subpoenas Duces Tecum*, 769 F.2d 52, 57 (2nd Cir. 1985) (emphasis added);
7 *Securities & Exchange Commission v. First Jersey Securities, Inc.*, 843 F.2d 74, 76 (2nd Cir. 1988).

8 40. On March 26, 2014, Catharon's counsel rejected the Securities Division's proposal
9 that Catharon appoint an alternate custodian of records to testify. See letter dated March 26, 2014
10 from B. Heurlin to J. Burgess, a true and correct copy of which is attached hereto as **Exhibit 15**
11 ("The Feinbergs are not going to try to find someone who knows nothing about Catharon
12 documents, but is willing to testify as to the business records foundation.").

13 41. As of the date this Complaint was filed, Catharon has not agreed that Mr. Feinberg,
14 in his capacity as Custodian of Records, will withdraw his Fifth Amendment objections and testify,
15 or that an alternate Custodian of Records will testify. See **Exhibit 1** [Burgess Aff.] at ¶ 28.

16 III. Claims

17 A. Refusal to Obey Subpoena for Testimony

18 42. The Commission is authorized to investigate whether Catharon has violated the
19 Securities Act. See Ariz. Const. art. 15, § 4; A.R.S. §§ 44-1822, 44-1823 and 44-1825.

20 43. A.R.S. § 44-1822 broadly authorizes the Commission to "make such public or
21 private investigations within or outside of this state as the commission deems necessary to
22 determine whether any person has violated or is about to violate any provisions of this [Chapter 12:
23 Sales of Securities]...." This statute allows the Commission to "investigate and examine ... the
24 affairs of any person when the commission believes that such person is or may be issuing or
25 dealing in or selling or buying securities." A.R.S. § 44-1822.

26 44. An appropriately empowered agency, such as the Commission, "[C]an investigate
merely on suspicion that the law is being violated, or even just because it wants assurance that it is
not." *Carrington v. Arizona Corporation Commission*, 199 Ariz. 303, 305 ¶ 8, 18 P.3d 97, 99 ¶ 8
(App. 2000) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)).

1 45. “The investigatory powers of administrative agencies are analogous in their breadth
2 to those of the grand jury.” *Shelby School v. Arizona St. Bd. Of Educ.*, 192 Ariz. 156, 169 ¶ 62,
3 962 P.2d 230, 243 ¶ 62 (App. 1998).

4 46. As part of its investigations, the Commission may “subpoena witnesses, take
5 evidence and require by subpoena duces tecum or by citation the production of books, papers,
6 contracts, agreements or other documents, records or information ... which the commission deems
7 relevant or material to the inquiry.” A.R.S. § 44-1823(A).

8 47. If a person refuses to obey a Commission subpoena, Arizona’s Legislature mandates
9 that this Court “shall issue to the person an order requiring the person to appear before the
10 commission, the director or the officer designated by the commission ... to give evidence touching
11 the matter under investigation or in question. Failure to obey the order of the court may be
12 punished by the court as a contempt of court.” A.R.S. § 44-1825(A).

13 48. The Commission acted within its authority when it issued the January 3, 2014
14 Subpoena Duces Tecum to Catharon’s Custodian of Records and the February 24, 2014 Subpoena
15 requiring Catharon’s Custodian to testify.

16 49. There is no legal basis for Catharon’s Custodian of Records to assert a Fifth
17 Amendment privilege against self-incrimination. *See Braswell*, 487 U.S. at 113; *Milligan*, 371 F.
18 Supp.2d at 1129-30 (records custodian of alleged one-man corporation could not assert the Fifth
19 Amendment privilege and was required to produce documents and testify).

20 50. Nor can Catharon’s Custodian assert a privilege based on Article 2, Section 10 of
21 the Arizona Constitution. The Arizona Supreme Court interprets the state constitutional privilege
22 against self-incrimination in conformity with the United States Supreme Court’s interpretation of
23 the same clause in the federal constitution. *State v. Mauro*, 159 Ariz. 186, 191, 766 P.2d 59, 64
(1988).

24 51. Even if such a privilege existed for Catharon’s Custodian, which it does not, Mr.
25 Feinberg waived it by testifying regarding Catharon’s January 27, 2014 document production in his
26

1 Affidavit of Custodian of Records, which he provided through Catharon's counsel at that time,
2 Tanya Miller.

3 52. Catharon is refusing to obey the Commission's lawfully-issued Subpoena dated
4 February 24, 2014, which requires it to produce a Custodian of Records who is authorized to testify
5 regarding Catharon's document production in response to the Subpoena Duces Tecum dated
6 January 3, 2014.

7 53. If Mr. Feinberg cannot testify as Catharon's Custodian of Records without
8 incriminating himself, Catharon "must find some means by which to comply because no Fifth
9 Amendment defense is available to it." *Braswell*, 487 U.S. at 116. "The means most commonly
10 used to comply is the appointment of an alternate custodian." *Id.* at 116; *In Re Two Grand Jury*
11 *Subpoenas Duces Tecum*, 769 F.2d at 57; *First Jersey Securities, Inc.*, 843 F.2d at 76.

12 54. Mr. Feinberg's refusal to testify at the March 4th Custodian of Records examination,
13 and Catharon's refusal to appoint an alternate Custodian, are obstructing the Commission's
14 investigation of whether Catharon has violated the Securities Act.

15 55. Among other problems, the Commission is unable to determine whether the
16 documents Catharon produced on January 27th and February 25th were all the records it has that are
17 responsive to the Subpoena Duces Tecum, or whether Catharon is withholding responsive
18 documents.

19 56. The Securities Division has concluded that Catharon will not comply with the
20 February 24th Subpoena for testimony from its Custodian of Records without the Court's
21 intervention.

21 **B. Expenses and Attorneys' Fees**

22 57. A.R.S. § 44-1825(C) mandates that the Court "shall award reasonable expenses,
23 including attorney fees, to the commission if the refusal to obey a subpoena or citation issued by
24 the commission was not substantially justified, unless other circumstances make an award of
25 expenses unjust."
26

1 58. Mr. Feinberg's refusal to testify at the March 4th Custodian of Records examination,
2 and Catharon's refusal to appoint an alternate Custodian, are not substantially justified. They are
3 contrary to well-established Fifth Amendment law.

4 59. Pursuant to A.R.S. § 44-1825(C), the Commission respectfully requests that the
5 Court order Catharon to reimburse the Commission for its reasonable expenses, including
6 attorneys' fees, incurred in having to bring this action.

7 **IV. Prayer for Relief**

8 WHEREFORE, the Commission prays that this Court enter judgment against Defendant
9 Catharon Software Corporation as follows:

- 10 1. Order Catharon Software Corporation to produce an authorized Custodian of
11 Records to appear before the Commission or any officer designated by the
12 Commission and give evidence by testifying regarding Catharon's document
13 production in response to the Subpoena Duces Tecum the Commission
14 served on it dated January 3, 2014;
- 15 2. Order that Catharon Software Corporation reimburse the Commission for its
16 reasonable expenses, including attorneys' fees, incurred in this action; and
- 17 3. Order any other relief that the Court deems appropriate.

18
19 DATED: 11th day of June, 2014.

20 ARIZONA CORPORATION COMMISSION

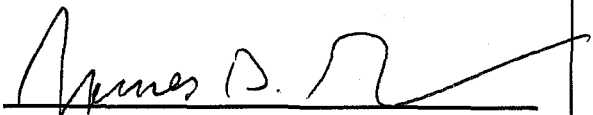
21
22 By: 
23 James D. Burgess
24 Counsel for Plaintiff
25
26

Exhibit 1

1 STATE OF ARIZONA)
2 County of Maricopa)

AFFIDAVIT OF JAMES D. BURGESS

3
4 I, James D. Burgess, being duly sworn, state as follows:

5 1. I am more than 18 years of age and competent to make this affidavit. The
6 statements herein are based upon my personal knowledge and the business records of the
7 Arizona Corporation Commission ("Commission") and are true and correct.

8 2. I am an attorney for the Commission, which is the Plaintiff in this subpoena
9 enforcement action.

10 3. On January 3, 2014, the Securities Division of the Commission issued three
11 Subpoenas Duces Tecum for the production of documents to the Custodian of Records for
12 Catharon Software Corporation ("Catharon"), Michael A. Feinberg, and Betsy A. Feinberg. On
13 January 4, 2014, the Securities Division served those Subpoenas Duces Tecum via certified
14 mail on Catharon, and Mr. and Mrs. Feinberg.

15 4. A true and correct copy of the Subpoena Duces Tecum dated January 3, 2014,
16 that the Commission served on Catharon's Custodian of Records is attached to the Complaint
17 in this action as **Exhibit 2**.

18 5. On January 16, 2014, attorney Tanya Miller informed me that she and her law
19 firm, Gabroy, Rollman & Bosse, P.C., represented Catharon with respect to the Subpoena
20 Duces Tecum directed to its Custodian of Records. Ms. Miller stated that her firm did not
21 represent Mr. or Mrs. Feinberg.

22 6. At Ms. Miller's request, and in exchange for her agreement that Catharon's
23 Custodian would make a partial document production on January 27, 2014, the Securities
24 Division granted an extension to February 14, 2014, for the Custodian to complete Catharon's
25 response to the Subpoena Duces Tecum.

26 7. On January 27, 2014, Catharon made a partial production consisting of: (i)
documents bates labeled as CSC00001 to CSC00166; (ii) a letter from Ms. Miller asserting
objections to the Subpoena Duces Tecum, a true and correct copy of which is attached to the

1 Complaint as **Exhibit 3**; and (iii) an Affidavit of Custodian of Records stating it was executed
2 by Michael Alan Feinberg, a true and correct copy of which is attached to the Complaint as
3 **Exhibit 4**.

4 8. On January 27, 2014, neither Mr. Feinberg nor Mrs. Feinberg produced any
5 documents or otherwise responded to the Subpoenas Duces Tecum directed to them dated
6 January 3, 2014.

7 9. On February 13, 2014, attorney Bruce Heurlin informed me that Catharon and
8 Mr. and Mrs. Feinberg had engaged his law firm, Heurlin Sherlock P.C., to represent them with
9 respect to the Subpoenas Duces Tecum dated January 3, 2014. Mr. Heurlin stated that Ms.
10 Miller and her law firm would no longer be representing Catharon. A true and correct copy of
11 the confirming letter I sent to Bruce Heurlin on February 13, 2014, is attached to the Complaint
12 as **Exhibit 5**.

13 10. Ms. Miller subsequently confirmed that her firm no longer represented
14 Catharon.

15 11. Mr. Heurlin requested, and the Securities Division granted, a further extension
16 to February 25, 2014, for the Custodian to complete Catharon's response to the Subpoena
17 Duces Tecum. The Securities Division also granted Mr. and Mrs. Feinberg until February 25th
18 to respond to the Subpoenas Duces Tecum directed to them.

19 12. On February 13, 2014, Mr. Heurlin and I also discussed that the Securities
20 Division would take the examinations under oath of Mr. Feinberg, Mrs. Feinberg, and
21 Catharon's Custodian of Records. Mr. Heurlin offered March 4, 2014, as the date for those
22 examinations.

23 13. On February 20, 2014, Mr. Heurlin emailed me and stated with respect to
24 Catharon, "There is no official custodian of records and the Feinbergs perform that role." A
25 true and correct copy of Mr. Heurlin's email is attached to the Complaint as **Exhibit 6**

26 14. The Securities Division subsequently served Subpoenas dated February 24,
2014, on Catharon's Custodian of Records and Mr. and Mrs. Feinberg requiring them to appear

1 and testify on March 4, 2014. A true and correct copy of the Subpoena for testimony to
2 Catharon's Custodian of Records is attached to the Complaint as **Exhibit 7**.

3 15. On February 25, 2014, Catharon's Custodian of Records and Mr. and Mrs.
4 Feinberg produced 13,090 pages of documents in response to the Subpoenas Duces Tecum
5 dated January 3, 2014. A true and correct copy of the letter I received from Bruce Heurlin
6 dated February 25, 2014, which accompanied his clients' document production on that date, is
7 attached to the Complaint as **Exhibit 8**.

8 16. I have reviewed a 2013 Business Plan that Catharon provided to investors. It
9 states that Catharon has 10 employees and has raised over \$6 million.

10 17. Documents Catharon produced to the Securities Division indicate that it has
11 approximately 340 shareholders.

12 18. On March 4, 2014, Mr. and Mrs. Feinberg appeared for their examinations under
13 oath with their counsel, Mr. Heurlin. Mr. and Mrs. Feinberg pled their respective Fifth
14 Amendment privileges against self-incrimination in response to every substantive question
15 from the Securities Division.

16 19. The Securities Division then called for Catharon's Custodian of Records to be
17 examined under oath pursuant to the Subpoena for testimony dated February 24, 2014.

18 20. Catharon designated Mr. Feinberg for the Custodian of Records examination.
19 Mr. Feinberg, however, asserted a privilege against self-incrimination based on the Fifth
20 Amendment to the United States Constitution. He refused to answer questions as Catharon's
21 Custodian.

22 21. On February 26, 2014, the Securities Division filed a Temporary Cease and
23 Desist Order and Notice of Opportunity for Hearing ("TC&D") with the Commission against
24 Catharon, and Mr. and Mrs. Feinberg. A true and correct copy of the TC&D is attached to the
25 Complaint as **Exhibit 9**.

26 22. A true and correct copy of the Transcript of Examination Under Oath of Michael
Feinberg, Custodian of Records of Catharon Software Corporation, dated March 4, 2014, is
attached to the Complaint as **Exhibit 10**.

1 23. On March 7, 2014, I wrote to Mr. Heurlin in an effort to avoid having to bring
2 this action to enforce the Subpoena for testimony from Catharon's Custodian of Records. A
3 true and correct copy of the letter I sent to Mr. Heurlin on March 7, 2014 is attached to the
4 Complaint as **Exhibit 11**.

5 24. On March 13, 2014, I received a letter from Mr. Heurlin in which he wrote,
6 "Catharon did not conduct business as a 'corporation' Catharon operated as a
7 proprietorship." A true and correct copy of the letter I received on March 13, 2014 is attached
8 to the Complaint as **Exhibit 12**.

9 25. On March 14, 2014, Catharon, and Mr. and Mrs. Feinberg filed an Answer to
10 the TC&D, a true and correct copy of which is attached to the Complaint as **Exhibit 13**.

11 26. On March 20, 2014, I wrote to Mr. Heurlin again in another effort to avoid
12 having to bring this action to enforce the Subpoena for testimony from Catharon's Custodian of
13 Records. A true and correct copy of the letter I sent to Mr. Heurlin on March 20, 2014 is
14 attached to the Complaint as **Exhibit 14**.

15 27. On March 26, 2014, I received a response letter from Mr. Heurlin, a true and
16 correct copy of which is attached to the Complaint as **Exhibit 15**.

17 28. As of the date the Complaint in this action was filed, Catharon has not agreed
18 that Mr. Feinberg, in his capacity as Custodian of Records, will withdraw his Fifth Amendment
19 objections and testify, or that an alternate Custodian of Records will testify.

20 FURTHER AFFIANT SAITH NOT

21 _____
22 James D. Burgess

23 JAMES D. BURGESS

24 SUBSCRIBED AND SWORN TO BEFORE me this 11th day of June, 2014.

25 _____
26 NOTARY PUBLIC

My Commission Expires:

10-06-15

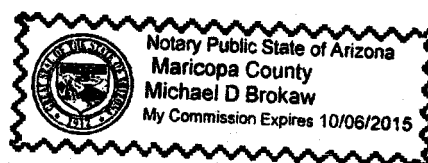


Exhibit 2

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 714-8120
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

January 3, 2014

SENT VIA CERTIFIED MAIL

Custodian of Records
Catharon Software Corporation
4729 East Sunrise Drive, #448
Tucson, Arizona 85718

RE: Subpoena for Catharon Software Corporation, File #8461

Dear Sir/Madam:

Enclosed you will find a Subpoena which requires your appearance before the Securities Division to produce the documents listed on Exhibit "A" of the Subpoena. Testimony concerning the documents will be scheduled at a later time, if necessary.

In lieu of a personal appearance, you may produce the documents along with the Affidavit of Custodian of Records by the due date by mailing them to Annalisa Weiss, Securities Division, Arizona Corporation Commission, 1300 West Washington St., Third Floor, Phoenix, Arizona 85007 or via email to aweiss@azcc.gov.

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

This Subpoena is being served upon you with sufficient notice in order to enable you to retain the services of an attorney, if you so wish. If you or your attorney have any questions regarding the above or the attached Subpoena, please feel free to contact me at (602) 542-0630.

Very truly yours,

Annalisa Weiss, CFCI
Special Investigator

Enclosure(s)

SUBPOENA

SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

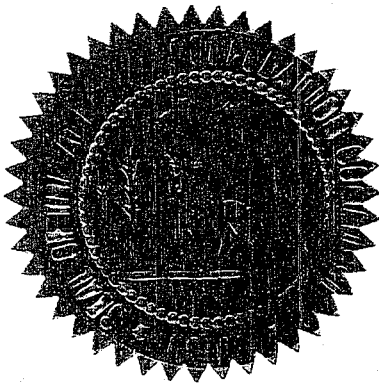
TO: Custodian of Records
Catharon Software Corporation
c/o National Corporate Services, Inc.
203 NE Front Street, Suite 101
Milford, DE 19963

In the matter of

Catharon Software Corporation, File #8461

involving possible violations of the Securities Act
and/or Investment Management Act of Arizona

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to appear before **Annalisa Weiss** of the Securities Division of the Arizona Corporation Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, on the **27th day of January, 2014 at 10 o'clock AM**, to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated by reference.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set her hand at Phoenix, Arizona this 3rd day of January, 2014.

Julie Coleman
Chief Counsel of Enforcement
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number (602) 542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Pursuant to A.R.S. § 44-1825 and A.R.S. § 44-3134, failure to comply with this subpoena may result in the application for a finding of contempt.

Pursuant to A.A.C. R14-4-304, any person required to appear at a formal interview may be represented by legal counsel.

AFFIDAVIT OF SERVICE (INDIVIDUAL)

State of Arizona)
County of Maricopa) ss.:

_____, being duly sworn, deposes and says:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

_____ Personal Service on the person named in the subpoena.

_____ Leaving a copy at the dwelling house of the person named in the subpoena with a person of suitable age (not less than 16 years of age) and discretion, then residing there.

_____ Leaving a copy at the usual place of business or employment of the person named in the subpoena with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar person of suitable age and discretion (not less than 16 years of age).

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the person named in the subpoena.

_____ Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known dwelling house or usual place of abode or last known business address, postage prepaid.

Name of Person Served: _____

Relationship to Person Named: _____

Place of Service: _____

Time and Date of Service: _____

Service Performed by: _____

Title: _____

Signature of Affiant: _____

Sworn to before me this _____ day of _____, 2014.

Notary Public

AFFIDAVIT OF SERVICE (BUSINESS ENTITY)

State of Arizona)
County of Maricopa) ss.:

Annalisa Ubl, being duly sworn, deposes and says:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

_____ Leaving a copy with an employee, of suitable age and discretion, (not less than 16 years of age) at any place of business of the corporation, partnership, trust, limited liability company, association, or other business entity.

_____ Leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member-managed limited liability company, manager of a manager-managed limited liability company or any authorized representative of an association or other business entity.

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the entity named in the subpoena.

X Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known business address, postage prepaid.

Name of Person Served: Seth Kuhlmann

Relationship to Person Named: Agent

Place of Service: TUCSON, AZ 85718

Time and Date of Service: 12:20 on 01-04-14

Service Performed by: USPS

Title: Certified Mail

Signature of Affiant: _____

Sworn to before me this 7th day of JANUARY, 2014.

Notary Public

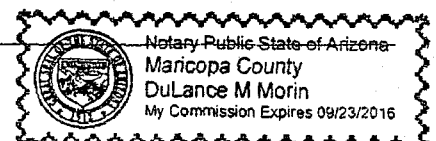


Exhibit "A"

Unless otherwise stated, this Subpoena Duces Tecum seeks information and documents, whether stored on electronic media or otherwise, from the period beginning January 1, 2002, to the present.

In producing documents responsive to the categories below, you are to furnish all documents in Catharon Software Corporation's possession, custody or control, regardless of whether such documents are possessed directly by you or by Catharon Software Corporation's employees, agents, attorneys, or any subsidiary or affiliated entities.

1. Produce all documents relating to any assignment by Catharon Software Corporation of United States Patent No. 6,065,046.
2. Provide the names, addresses, and telephone numbers of all current and former officers and directors of Catharon Software Corporation.
3. Produce records of all salaries, bonuses, reimbursements, distributions, draws, loans, or any other compensation, whether monetary or otherwise, paid to the persons identified in response to category 2.
4. For the period from January 1, 2010 to the present, provide the names, addresses, telephone numbers, and positions of all current and former employees, programmers, beta testers, and any other agents or independent contractors of Catharon Software Corporation.
5. Produce documents reflecting the names, addresses, and telephone numbers of all individuals or entities who have been offered or sold shares of stock in Catharon Software Corporation.
6. Produce all documents, including but not limited to stock transfer records, reflecting the amount(s) and date(s) of each investment for each individual or entity who invested in Catharon Software Corporation, including the number of shares, the price paid and a sample share certificate.
7. Produce all documents relating to each individual or entity who invested in Catharon Software Corporation, including any subscription agreements, contracts, forms, notes, questionnaires, records of investment status, checks, wire transfers, receipts, account statements, tax information, correspondence, updates, or other communications.
8. Produce all documents reflecting the amount(s) and date(s) of any dividend, distribution, interest, earnings, stock splits, spin-offs, rescission, refund, or any

other form of returns to each individual or entity who invested in Catharon Software Corporation.

9. For each bank or other depository institution account(s) in the name of, or for the benefit of, Catharon Software Corporation from January 1, 2002 to the present, whether open or closed, state:
 - a. the name of the bank or depository institution and address of the branch at which the account is/was located;
 - b. the name and number of each account; and
 - c. the names of all signatories on each account.
10. State the address for each facility where Catharon Software Corporation developed and/or conducted programming for V^Delta.
11. Produce all leases or deeds for each facility listed in response to category 10.
12. Produce all offering memoranda, newsletters, prospectuses, reports, correspondence, circulars, brochures, flyers, handouts, or any other records Catharon Software Corporation made available to potential or actual investors.
13. Produce all documents Catharon Software Corporation submitted for the purpose of compliance, reporting, or seeking exemptions from registration with any state or federal securities agency.
14. State the name(s) of each limited liability company, corporation or other entity in which Catharon Software Corporation has an ownership interest, including but not limited to Catharon Intellectual Properties, LLC, and produce all documents relating to that ownership interest.
15. Produce Catharon Software Corporation's articles of incorporation and bylaws, including any amendments to those documents.
16. Produce all records of any annual or special meeting(s) of Catharon Software Corporation's shareholders, including meeting agendas, minutes and resolutions adopted.
17. Produce all records of Catharon Software Corporation's board of director meetings, including agendas, minutes and resolutions adopted.
18. Produce all financial statements for Catharon Software Corporation, including its annual and quarterly financial reports, whether audited or unaudited, with accompanying footnotes and any auditor's reports including any amendments.

19. Produce all accounting records and books of original entry for Catharon Software Corporation including but not limited to cash receipts journals, cash disbursements journals, sales journals, general journals, subsidiary journals, general ledger, and subsidiary ledgers.
20. Produce all state and federal income tax returns filed by Catharon Software Corporation, including all schedules and forms.
21. Produce all documents concerning any inquiries or investigations of, or actions against, Catharon Software Corporation by any state or federal governmental agency.

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____)
) ss.
County of _____)

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of _____
_____.
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Custodian of Records

SUBSCRIBED and SWORN to before me this _____ day of _____, 2014,

by _____

NOTARY PUBLIC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return card to you.
- Attach this card to the mailpiece, if permitted.

1. Article Addressed to:

Michael A. Feinberg
Catharon Software Corporation
4729 East Sunrise Drive, #448
Tucson, Arizona 85718

2. Article Number
(Transfer from service label)

7010 1670 0000 9052 5243

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Seth Kuhlman 1/4/14

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage

Postmark
Here

Sent To

Street, Apt. No.,
or PO Box No.
City, State, ZIP+

Michael A. Feinberg
Catharon Software Corporation
4729 East Sunrise Drive, #448
Tucson, Arizona 85718

PS Form 3800, April 2003

See Reverse for Instructions

7010 1670 0000 9052 5243

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Custodian of Records
Catharon Software Corporation
c/o National Corporate Services, Inc.
203 NE Front Street, Suite 101
Milford, DE 19963

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/10/14

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7010 1670 0000 9052 5250

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540.

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com**OFFICIAL USE**

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage

Postmark
Here

Sent To

Street, Apt. No.
or PO Box No.
City, State, ZIP

Custodian of Records
Catharon Software Corporation
c/o National Corporate Services, Inc.
203 NE Front Street, Suite 101
Milford, DE 19963

PS Form 3811, August 2003

See Reverse for Instructions

7010 1670 0000 9052 5250

Exhibit 3

STEVEN L. BOSSÉ
RICHARD M. ROLLMAN
JOHN GABROY
RONALD M. LEHMAN
FRED A. FARSIJO
RICHARD A. BROWN
CRAIG L. CLINE
LISA BOSSARD FUNK
E. JOY ELLIOTT
TANYA N. MILLER

LAW OFFICES OF
GABROY ROLLMAN & BOSSÉ
P.C.
3507 NORTH CAMPBELL AVENUE, SUITE 111
TUCSON, ARIZONA 85719

TELEPHONE
520.320.1300

FAX
520.320.0717

January 27, 2014

SENDER'S E-MAIL ADDRESS
MILLER@GABROYLAW.COM

VIA ELECTRONIC DELIVERY

James D. Burgess
Enforcement Attorney
ARIZONA CORPORATION COMMISSION, SECURITIES DIVISION
1300 West Washington Street, Third Floor
Phoenix, AZ 85007
jburgess@azcc.gov

Annalisa Weiss, CFCI
Special Investigator
ARIZONA CORPORATION COMMISSION, SECURITIES DIVISION
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007
aweiss@azcc.gov

Re: Subpoena Catharon Software Corporation, ACC File #8461

Dear Mr. Burgess and Ms. Weiss:

This letter is in response to the subpoena addressed to the custodian of records for Catharon Software Corporation ("Catharon") issued by your division on January 3, 2014 and Mr. Burgess' follow up letter of January 16, 2014. The latter narrowed the information requested for production by January 27, 2014. Pursuant to Ms. Weiss's letter of January 3, 2014, the Affidavit of the Custodian of Records, this letter and the enclosures referenced therein are being provided to you at the email addresses you have provided. Our individual responses to the items in Mr. Burgess' letter of January 16, 2014 are listed below, according to the number previously assigned to each in the subpoena dated January 3, 2014 (the January 16, 2014 letter from Mr. Burgess listed these by bullet point, not number).

1. All documents relating to any assignment by Catharon Software Corporation of United States Patent No. 6,065,046. Presumably, if Catharon assigned its patent, it would be easily able to locate the

Michael A. Feinberg
January 27, 2014
Page 2 of 4

assignment and any other relevant documents in its corporate records and then produce them.

Catharon objects to this request as it is vague, ambiguous, overbroad and overly burdensome to the extent it requires Catharon to produce "any other relevant documents in its corporate records." *See Helge v. Druke*, 136 Ariz. 434, 439, 666 P.2d 534, 539 (App. 1983) ("The designation of documents sought to be discovered must have sufficient particularity to enable the person who has possession, custody and control thereof to know what is required."). Without waiving these objections, see CSC00001-29.

4. For the period from January 1, 2010 to the present, provide the names, addresses, telephone numbers, and positions of all current and former employees, programmers, beta testers, and any other agents or independent contractors of Catharon. Most, if not all of this information should be readily accessible by Catharon. Any responsive information that Catharon has, but cannot locate and produce by January 27th Catharon may produce with its response on February 14th.

See, CSC00030.

5. Documents reflecting the names, addresses, and telephone numbers of all individuals or entities to whom Catharon sold its' stock. Catharon should have a record of its shareholders. This information should not be difficult to locate and produce.

Catharon objects to this request as it is overly burdensome to the extent it requires Catharon to create a document not kept in the normal course of business. Catharon is not required to create documents in order to respond to a subpoena. *See Ariz. R. Civ. P. 45(c)(4)* ("Production of Documents. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand."). Catharon does not have a document reflecting telephone numbers of all individuals or entities to whom Catharon sold its' stock.

Michael A. Feinberg

January 27, 2014

Page 3 of 4

Furthermore, to the extent the request seeks documents which are not in Catharon's possession, custody, or control, Catharon objects to the scope of the request as over broad and overly burdensome.

Without waiving these objections, see CSC00031-34.

8. Documents reflecting the amount(s) and date(s) of any dividend, interest, earnings, stock splits, rescission, refund, or any other form of returns to investors. If Catharon has never paid any dividends or other returns to investors, it can simply state so.

Catharon objects to this request as it is vague, ambiguous, overbroad and overly burdensome to the extent it requires Catharon to create a document not kept in the normal course of business. Without waiving these objections, there are no documents or information responsive to this request.

9. The name and branch address of the bank(s) or depository institution(s) at which Catharon had an account since 2002. If Catharon cannot provide the information going back to 2002 by January 27th, it may provide the responsive information about its bank(s) since 2010 (which should be readily accessible) by January 27th, and then provide the information for 2002-2009 with its response on February 14th.

See, CSC00035.

10. The address for each facility where Catharon developed and/or conducted programming for VΔDelta. Catharon ought to be easily able to provide the address of its facility or facilities.

Catharon objects to this request as it is vague, ambiguous, overbroad and overly burdensome to the extent it requires Catharon to create a document not kept in the normal course of business. Without waiving these objections, see CSC00036-166, which are the leasing agreements for one such facility.

Aside from the location noted in the attached lease agreement documentation, development on this project occurred at 2119 Route 66, Ghent NY 12075 and, after February 2002, at 60 Rolling Drive, Sedona AZ 86336. Programmers for this project also telecommuted at various times, developing the subject project from home. Home addresses of programmers are noted in CSC00030, provided

LAW OFFICES OF
GABROY ROLLMAN & BOSSÉ
P.C.

Michael A. Feinberg
January 27, 2014
Page 4 of 4

in response to subpoena request No. 4. To the extent programmers telecommuted from other physical locations while developing this project, Catharon objects to this request to the extent it requires information that is not within Catharon's possession, custody or control.

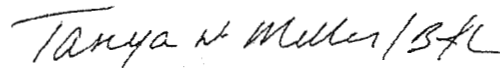
14. State the names of each limited liability company, corporation, or other entity in which Catharon has an ownership interest, including but not limited to Catharon Intellectual Properties, LLC ("CIP"), and produce all documents relating to that ownership interest. If CIP is the only such entity, responding this request by January 27th should be relatively easy. If there are other entities in which Catharon has an ownership interest, you may identify them on January 27th and then supply the relevant documents with Catharon's response on February 14th.

Catharon Intellectual Properties, LLC ("CIP") is the only entity which Catharon Software Corporation has an ownership interest. See, CSC00001-29, provided in response to subpoena request No. 1, noted above.

Thank you.

Sincerely,

GABROY, ROLLMAN & BOSSÉ, P.C.



Tanya N. Miller

TNM/bjl

Enclosures: Catharon bates stamped Materials CSC00001-166; Affidavit of Custodian of Records

Exhibit 4

AFFIDAVIT OF CUSTODIAN OF RECORDS

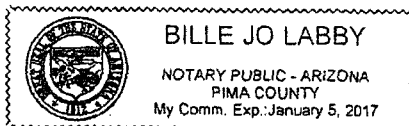
STATE OF Arizona)
County of Pima) ss.

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of Catharon Software Corporation.
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Michael Alan Feinberg
Custodian of Records

SUBSCRIBED and SWORN to before me this 27 day of January, 2014,
by Michael Alan Feinberg.



Bille Jo Labby
NOTARY PUBLIC

Exhibit 5

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 714-8120
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

February 13, 2014

VIA EMAIL & U.S. MAIL

Bruce Heurlin, Esq.
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096

Re: Catharon Software Corporation, Betsy A. Feinberg and Michael A. Feinberg

Dear Bruce:

It was a pleasure speaking with you today. You stated that yesterday Catharon Software Corporation ("Catharon"), Betsy A. Feinberg and Michael A. Feinberg engaged you to represent them with respect to the Subpoenas Duces Tecum the Securities Division served them with on January 4, 2014, as well as any other matters they may have with the Division. You stated that Tanya Miller and her law firm will no longer be representing Catharon and will not have any role going forward. By copy of this letter to Ms. Miller, we ask that you write to confirm or correct that information about your representation.

Bruce, you stated you have not yet seen the Subpoenas Duces Tecum that Catharon and Mr. and Mrs. Feinberg received on January 4th. Accompanying the emailed version of this letter, please find additional copies of those Subpoenas.

You requested until February 28, 2014, for Catharon and Mr. and Mrs. Feinberg to respond to the Subpoenas. I explained that the original due date was January 27th, but that at Ms. Miller's request, I granted an extension until February 13th for Catharon to finish production. (Catharon produced some responsive documents bates-labeled as CSC000001 to CSC000166 on January 27th). I further explained that the previous extension to February 13th was for Catharon only, as Mr. and Mrs. Feinberg never requested through Ms. Miller or otherwise an extension of the January 27th response date for them. To date, Mr. and Mrs. Feinberg have not produced any documents or otherwise responded to the Subpoenas directed to them. I have not taken any action for their violations of the Subpoenas because I am waiting to see what further documents Catharon produces when it completes its production.

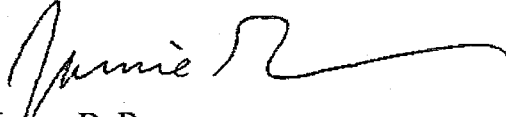
As a professional courtesy to you, I agreed to further extend the time for Catharon to complete its production to 10:00 a.m. on Tuesday, February 25, 2014. I also agreed that Mr. and Mrs. Feinberg may have until that date and time to make their production too.

It is critical that we receive the responsive documents from your clients by 10:00 a.m. on February 25th because I will need adequate time to review the documents to prepare for your clients' examinations under oath. You offered March 4th as an available date for your clients' examinations. Since we spoke, I have confirmed that March 4th will also work for this office. Please plan on all day March 4th for the separate examinations of Mr. and Mrs. Feinberg and the custodian of records for Catharon.

You stated that Catharon and Mr. and Mrs. Feinberg have authorized you to accept service of process on their behalf. Accordingly, next week we will serve you with subpoenas for the March 4th examinations of your clients.

I look forward to working with you on this matter.

Sincerely,



James D. Burgess

Enclosures

Cc (w/o Enc.): Tanya Miller, Esq.

Exhibit 6

James Burgess

From: Bruce Heurlin <bheurlin@aztoplawyers.com>
Sent: Thursday, February 20, 2014 4:21 PM
To: James Burgess
Cc: Judy Brewer
Subject: RE: Catharon

9am ok.

Who do you want first?

There is no official custodian of records and the Feinbergs perform that role.

Bruce R. Heurlin
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096
Tel: (520) 319-1200 Ext. 1
Fax: (520) 319-1221
Email: BHeurlin@AZtopLawyers.com

From: James Burgess [<mailto:JBurgess@azcc.gov>]
Sent: Thursday, February 20, 2014 12:23 PM
To: Bruce Heurlin
Cc: James Burgess
Subject: RE: Catharon

Bruce,

I am going to have lot to ground to cover, so starting at 10:00 a.m. won't work. If you and your clients need to stay the night of March 3rd in Phoenix so that we can start by 9:00 a.m., please plan to do so.

James Burgess
Enforcement Attorney
Arizona Corporation Commission, Securities Division
(602) 542-0171 – Direct Line
(602) 714-8120 Fax
jburgess@azcc.gov

From: Bruce Heurlin [<mailto:bheurlin@aztoplawyers.com>]
Sent: Thursday, February 20, 2014 11:33 AM
To: James Burgess
Cc: Annalisa Weiss
Subject: RE: Catharon

I will accept service of subpoenas.

As to time, I am meeting with them today and will get back to you today.

Bruce R. Heurlin
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096
Tel: (520) 319-1200 Ext. 1
Fax: (520) 319-1221
Email: BHeurlin@AZtopLawyers.com

From: James Burgess [<mailto:JBurgess@azcc.gov>]
Sent: Thursday, February 20, 2014 11:22 AM
To: Bruce Heurlin
Cc: Annalisa Weiss; James Burgess
Subject: RE: Catharon

Bruce, we are confirmed for Examinations Under Oath for 3/4/2014. We will direct the subpoenas for your clients to you.

Can you start at 9:00 a.m. or even 9:30 rather than 10:00?

James Burgess
Enforcement Attorney
Arizona Corporation Commission, Securities Division
(602) 542-0171 – Direct Line
(602) 714-8120 Fax
jburgess@azcc.gov

From: Bruce Heurlin [<mailto:bheurlin@aztoplawyers.com>]
Sent: Thursday, February 20, 2014 10:34 AM
To: James Burgess
Subject: Catharon

Are we confirmed for 3-4-14 interviews?

10am start ok?

Bruce R. Heurlin
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096
Tel: (520) 319-1200 Ext. 1
Fax: (520) 319-1221
Email: BHeurlin@AZtopLawyers.com
Website: www.AZtopLawyers.com

HS

HEURLIN SHERLOCK

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If you have any questions, please contact us at (520) 319-1200.

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=====

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been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov
=====

Exhibit 7

SUBPOENA

SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

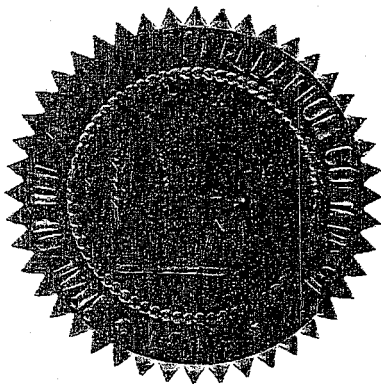
TO: Custodian of Records
Catharon Software Corporation
c/o Bruce R. Heurlin
1636 N. Swan Rd., Suite 200
Tucson, AZ 85712

In the matter of

Catharon Software Corporation, File #8461

involving possible violations of the Securities Act
and/or Investment Management Act of Arizona

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to appear before
James Burgess, of the Securities Division of the Arizona Corporation Commission at 1300 West Washington
Avenue, Third Floor, Phoenix, Arizona 85007, on the 4th day of March, 2014, at 9 o'clock AM to PROVIDE
TESTIMONY.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set her hand at Phoenix, Arizona this 24th day of February, 2014.

Julie Coleman
Chief Counsel of Enforcement
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number (602) 542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Pursuant to A.R.S. § 44-1825 and A.R.S. § 44-3134, failure to comply with this subpoena may result in the application for a finding of contempt.

Pursuant to A.A.C. R14-4-304, any person required to appear at a formal interview may be represented by legal counsel.

AFFIDAVIT OF SERVICE (INDIVIDUAL)

State of Arizona)
County of Maricopa) ss.:

_____, being duly sworn, deposes and says:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

_____ Personal Service on the person named in the subpoena.

_____ Leaving a copy at the dwelling house of the person named in the subpoena with a person of suitable age (not less than 16 years of age) and discretion, then residing there.

_____ Leaving a copy at the usual place of business or employment of the person named in the subpoena with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar person of suitable age and discretion (not less than 16 years of age).

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the person named in the subpoena.

_____ Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known dwelling house or usual place of abode or last known business address, postage prepaid.

Name of Person Served: _____

Relationship to Person Named: _____

Place of Service: _____

Time and Date of Service: _____

Service Performed by: _____

Title: _____

Signature of Affiant: _____

Sworn to before me this _____ day of _____, 2014.

Notary Public

AFFIDAVIT OF SERVICE (BUSINESS ENTITY)

State of Arizona)
County of Maricopa) ss.:

Annalisa Weiss, being duly sworn, deposes and says:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

_____ Leaving a copy with an employee, of suitable age and discretion, (not less than 16 years of age) at any place of business of the corporation, partnership, trust, limited liability company, association, or other business entity.

_____ Leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member-managed limited liability company, manager of a manager-managed limited liability company or any authorized representative of an association or other business entity.

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the entity named in the subpoena.

X _____ Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known business address, postage prepaid.

Name of Person Served: Arleen Thomas

Relationship to Person Named: Agent

Place of Service: Tucson, AZ 85712

Time and Date of Service: 11:25 on 02/25/14

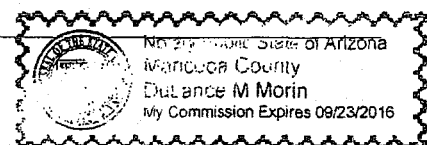
Service Performed by: Annalisa Weiss

Title: Special Investigator

Signature of Affiant: _____

Sworn to before me this 27 day of February, 2014.

Notary Public



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bruce R. Heurlin, Esq.
Heurlin Sherlock PC
 1636 North Swan Road, Suite 200
 Tucson, AZ 85712-4096

COMPLETE THIS SECTION ON DELIVERY

A. Signature *C. Thomas* ☒ Agent ☐ Addressee
 B. Received by (Printed Name) *C. Thomas* C. Date of Delivery *2/25/14*
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (Transfer from service label)

7010 1670 0000 9052 5595

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	
Sent To Street, Apt. No. or PO Box No. City, State, ZIP	

7010 1670 0000 9052 5595

Bruce R. Heurlin, Esq.
Heurlin Sherlock PC
 1636 North Swan Road, Suite 200
 Tucson, AZ 85712-4096

PS Form 3800, August 2006 See Back for Instructions

Exhibit 8



HEURLIN SHERLOCK

1636 N. Swan Road, Ste. 200
Tucson, Arizona 85712-4096
Telephone 520.319.1200
Facsimile 520.319.1221
www.AZtopLawyers.com
bheurlin@AZtopLawyers.com

February 25, 2014

James D. Burgess (jburgess@azcc.gov)
Enforcement Attorney
Arizona Corporation Commission, Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007

Annalisa Weiss, CFCI (aweiss@azcc.gov)
Special Investigator
Arizona Corporation Commission, Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007

**RE: Catharon Software Corporation, ACC File 8461
Betsy Feinberg and Michael Feinberg**

Dear Jim:

This responds to the Securities Division's January 3, 2014, three identical subpoenas issued to the custodian of records for Catharon Software Corporation, Betsy Feinberg and Michael Feinberg. The documents herewith produced are produced by the custodian of records for Catharon Software Corporation, Betsy Feinberg, and Michael Feinberg.

- 1. Produce all documents relating to any assignment by Catharon Software Corporation of United States Patent No. 6,065,046.***

Previously provided by attorney Tanya Miller in her letter and email dated January 27, 2014, documents CSC00001-29. Also see patent documents CSC000167-541, and legal actions CSC012670-12746.

- 2. Provide the names, addresses, and telephone numbers of all current and former officers and directors of Catharon Software Corporation.***

Enclosed is a list of all current and former officers and directors, CSC000542.

ACC001287
FILE #8461

3. *Produce records of all salaries, bonuses, reimbursements, distributions, draws, loans, or any other compensation, whether monetary or otherwise, paid to the persons identified in response to category 2.*

Enclosed is a ledger of all payments to current and former officers and directors, CSC000543-553.

4. *For the period from January 1, 2010 to the present, provide the names, addresses, telephone numbers, and positions of all current and former employees, programmers, beta testers, and any other agents or independent contractors of Catharon Software Corporation.*

Previously provided by attorney Tanya Miller, CSC00030.

5. *Produce documents reflecting the names, addresses, and telephone numbers of all individuals or entities who have been offered or sold shares of stock in Catharon Software Corporation.*

Previously provided by attorney Tanya Miller, CSC00031-34.

6. *Produce all documents, including but not limited to stock transfer records, reflecting the amount(s) and date(s) of each investment for each individual or entity who invested in Catharon Software Corporation, including the number of shares, the price paid and a sample share certificate.*

Enclosed is the Catharon Software Corporation stock ledger, CSC000554-560.

7. *Produce all documents relating to each individual or entity who invested in Catharon Software Corporation, including any subscription agreements, contracts, forms, notes, questionnaires, records of investment status, checks, wire transfers, receipts, account statements, tax information, correspondence, updates, or other communications.*

Enclosed are the Catharon Software Corporation stock records, CSC000561-12176. See also documents provided in response to request No. 12, below, CSC012177-13020.

8. *Produce all documents reflecting the amount(s) and date(s) of any dividend, distribution, interest, earnings, stock splits, spin-offs, rescission, refund, or any other form of returns to each individual or entity who invested in Catharon Software Corporation.*

Previously responded to by attorney Tanya Miller, none.

9. *For each bank or other depository institution account(s) in the name of, or for the benefit of, Catharon Software Corporation from January 1, 2002 to the present, whether open or closed, state:*
- a. *The name of the bank or depository institution and address of the branch at which the account is/was located;*
 - b. *The name and number of each account; and*
 - c. *The names of all signatories on each account.*

Previously provided by attorney Tanya Miller, CSC00035.

10. *State the address for each facility where Catharon Software Corporation developed and/or conducted programming for V^Delta.*

Previously provided by attorney Tanya Miller.

11. *Produce all leases or deeds for each facility listed in response to category 10.*

Previously provided by attorney Tanya Miller, CSC00036-166.

12. *Produce all offering memoranda, newsletters, prospectuses, reports, correspondence, circulars, brochures, flyers, handouts, or any other records Catharon Software Corporation made available to potential or actual investors.*

Please see documents provided in response to request No. 7, above CSC000561-12176. Also, enclosed are Catharon Software Corporation newsletters and Catharon Software Corporation Wiki website information including information only available to current investors, CSC012177-13020.

13. *Produce all documents Catharon Software Corporation submitted for the purpose of compliance, reporting, or seeking exemptions from registration with any state or federal securities agency.*

None.

14. *State the name(s) of each limited liability company, corporation or other entity in which Catharon Software Corporation has an ownership interest, including but not limited to Catharon Intellectual Properties, LLC, and produce all documents relating to that ownership interest.*

Previously provided by attorney Tanya Miller, CSC00001-29.

- 15. *Produce Catharon Software Corporation's articles of incorporation and bylaws, including any amendments to those documents.***

Enclosed are the Catharon Software Corporation bylaws and certificate of incorporation, CSC013021-13032.

- 16. *Produce all records of any annual or special meeting(s) of Catharon Software Corporation's shareholders, including meeting agenda, minutes and resolutions adopted.***

Enclosed are Catharon Software Corporation shareholders meetings records, CSC013033-13044.

- 17. *Produce all records of Catharon Software Corporation's board of director meetings, including agendas, minutes and resolutions adopted.***

Enclosed are Catharon Software Corporation board of director meetings records, CSC013045-13079.

- 18. *Produce all financial statements for Catharon Software Corporation, including its annual and quarterly financial reports, whether audited or unaudited, with accompanying footnotes and any auditor's reports including any amendments.***

Enclosed are Catharon Software Corporation financial reports, CSC013080-13103.

- 19. *Produce all accounting records and books of original entry for Catharon Software Corporation including but not limited to cash receipts journals, cash disbursements journals, sales journals, general journals, subsidiary journals, general ledger, and subsidiary ledgers.***

Enclosed is the Catharon Software Corporation general ledger, CSC013104-13142.

- 20. *Produce all state and federal income tax returns filed by Catharon Software Corporation, including all schedules and forms.***

Enclosed are the Catharon Software Corporation federal income tax returns, CSC013143-13256.

James D. Burgess
February 25, 2014
Page 5 of 5

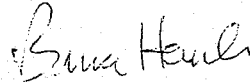
21. *Produce all documents concerning any inquiries or investigations of, or actions against, Catharon Software Corporation by any state or federal governmental agency.*

None.

This fully responds to the subpoenas directed to the custodian of records for Catharon Software Corporation, Betsy Feinberg and Michael Feinberg.

Sincerely,

HEURLIN SHERLOCK



Bruce R. Heurlin

encs.

Exhibit 9

ORIGINAL NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

2014 FEB 26 P 1:16

Arizona Corporation Commission

DOCKETED

FEB 26 2014

DOCKETED BY

12

In the matter of:

Catharon Software Corporation, a Delaware corporation,

Betsy A. Feinberg and Michael A. Feinberg, husband and wife,

Respondents.

DOCKET NO. S-20905A-14-0061

TEMPORARY ORDER TO CEASE AND DESIST AND NOTICE OF OPPORTUNITY FOR HEARING

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents CATHARON SOFTWARE CORPORATION, a Delaware corporation, BETSY A. FEINBERG, and MICHAEL A. FEINBERG are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. CATHARON SOFTWARE CORPORATION ("CATHARON") is a corporation organized under the laws of the State of Delaware on March 8, 2002. Since at least March 25, 2002,

1 CATHARON has been conducting business within or from Arizona. From 2002 to mid-2013,
2 CATHARON was based in and operated from Sedona, Arizona. From mid-2013 to the present,
3 CATHARON has been based in and operated from Tucson, Arizona. CATHARON has not been
4 registered by the Commission as a securities dealer or salesman, and is not registered with the
5 Commission to do any business in Arizona.

6 3. From March 25, 2002 through the present, BETSY A. FEINBERG has been a
7 Director and the Chief Executive Officer of CATHARON, and an Arizona resident.

8 4. From March 25, 2002 through the present, MICHAEL A. FEINBERG has been a
9 Director and the President and Treasurer of CATHARON, and an Arizona resident.

10 5. From March 25, 2002 through the present, BETSY A. FEINBERG and MICHAEL
11 A. FEINBERG have not been registered by the Commission as securities dealers or salespersons.

12 6. From March 25, 2002 through the present, BETSY A. FEINBERG and MICHAEL
13 A. FEINBERG have been husband and wife, and they have acted for their own individual benefits
14 and for the benefit or in furtherance of their marital community.

15 7. CATHARON, BETSY A. FEINBERG and MICHAEL A. FEINBERG may be
16 referred to individually as a "Respondent" or collectively as "Respondents" as the context so
17 requires.

18 III.

19 FACTS

20 8. From at least April 14, 2003, Respondents have been offering and selling common
21 stock in CATHARON within and from Arizona by representing that CATHARON owns a patented
22 computer language and infrastructure technology that "will allow it to compete in the market with
23 microcomputer language systems manufacturers, such as Microsoft...."

24 9. In Offering Memoranda dated March 25, 2002 and May 14, 2003, Respondents
25 called the technology "TenCORE Net." In Offering Memoranda dated May 26, 2010 and April 5,
26

1 2013, Respondents called the technology "VΔDelta." For consistency and ease of reference, the
2 technology is referred to herein as "VΔDelta."

3 10. CATHARON's website at
4 http://wiki.catharon.com/vdwiki/index.php/Catharon/About_Us ("Website") states:

5 We have created the first fully functional programming language for
6 authoring, distributing and reading interactive content over the
7 Internet. VΔDelta™, delivers rapidly over the Internet, providing a
8 programming paradigm that supports rapid and economical
9 development of content, facilitating new capabilities in Internet
10 software and systems management.

11 ...

12 Catharon has copyrighted the VΔDelta technology and been granted
13 a patent covering 11 major features of the protocol.

14 11. On December 18, 2013, a potential Arizona investor ("AZ Offeree") viewed the
15 Website from Arizona. The Website referenced CATHARON's "Current Offering" and stated,
16 "Current offering documents are available from the Reference Documents page."

17 12. AZ Offeree submitted her contact information to CATHARON through an on-line
18 form available on the Website.

19 13. On December 20, 2013, AZ Offeree received an email from the address
20 InvestorRelations@Catharon.com. The email contained four PDF attachments: (i) CATHARON's
21 Offering Memorandum dated April 5, 2013 ("the 2013 Offering Memorandum"); (ii)
22 CATHARON's Business Plan dated April 5, 2013 ("the 2013 Business Plan"); (iii) a VΔDelta
23 Wiki article dated February 1, 2013; and (iv) a VΔDelta Wiki article dated September 20, 2013
24 (collectively, "the 2013 Offering Materials.").

25 14. The 2013 Offering Memorandum states that CATHARON "is seeking to raise
26 \$500,000 from the sale of Common Stock."

15 15. The 2013 Business Plan states that CATHARON has raised \$6 million of private
16 equity funding.

1 16. Based upon that statement in the 2013 Business Plan, the Division alleges that
2 CATHARON has raised \$6 million from the sale of its common stock to investors.

3 17. CATHARON did not register the offer and sale of its common stock with the
4 Commission.

5 **Material Misrepresentations And Omissions In CATHARON's 2013 Offering**
6 **Materials**

7 18. CATHARON's 2013 Offering Materials contain misrepresentations and omissions
8 of material fact regarding: (i) CATHARON's purported ownership of the patents and rights to the
9 VADelta technology; (ii) CATHARON's undisclosed agreement to share fifty-percent (50%) of any
10 profits derived from the VADelta technology with a third-party; (iii) CATHARON's planned schedule
11 for launching the VADelta technology into the market; and (iv) the accuracy of CATHARON's
12 financial statements.

13 **1. Ownership Of The Patents And Rights To The VADelta Technology**

14 19. The 2013 Offering Memorandum represents VADelta as CATHARON's
15 "proprietary and patented technology," which it owns.

16 20. The 2013 Business Plan represents: "Catharon has been awarded 2 major patents
17 with a total of 65 claims." It represents CATHARON is the "Assignee" for United States Patent
18 Numbers 6,065,046 and 7,234,139 ("the Patents").

19 21. The 2013 Offering Materials repeatedly refer to the Patents as belonging to
20 CATHARON and covering the VADelta technology.

21 22. The 2013 Business Plan asserts that CATHARON's technology "represents the first
22 major breakthrough in computer languages in thirty years," "VADelta has several major advantages
23 over all other languages," and "There is no competition because all existing development
24 environments lack key elements...."

25 23. The purported value and potential of CATHARON's patented VADelta technology
26 are central to CATHARON's stock offering. According to the 2013 Offering Memorandum and

1 Business Plan, CATHARON's primary revenue source will come from "the low cost, high volume
2 licensing of VΔDelta...."

3 24. The 2013 Business Plan projects that CATHARON's licensing of VΔDelta will
4 generate \$2 billion in revenue within 3 years.

5 25. The 2013 Business Plan states, "Catharon will be returning nearly half its earnings
6 after taxes to its investors as dividends."

7 26. Based on what CATHARON states is its detailed research and analysis, the 2013
8 Business Plan projects investors will receive a three-year return on investment of 668%.

9 27. The 2013 Offering Memorandum states that CATHARON expects "intense
10 competition from Microsoft, Sun Microsystems and others."

11 28. The 2013 Business Plan, however, also represents to offerees and investors, "The
12 four-year technology lead coupled with the two [P]atents create a formidable barrier to entry for
13 prospective competitors."

14 29. The 2013 Business Plan further discusses the Patents' role in protecting the VΔDelta
15 technology and investors' investments in CATHARON: "These [P]atents effectively preclude
16 competitors from introducing software products and services that make unlicensed use of these
17 proprietary techniques."

18 30. The Patents no longer belong to CATHARON, however.

19 31. On January 9, 2013, CATHARON assigned to a third party whose initials are "FD",
20 "[A]ll right, title and interest in, and to the Patents" according to a Patent Assignment and Revenue
21 Share Agreement ("Patent Assignment") that BETSY A. FEINBERG executed that date. FD
22 granted back to CATHARON a nonexclusive "fully paid-up personal license to practice inventions
23 covered by the claims of the Patents."

24 32. According to the Patent Assignment, except for the nonexclusive license to
25 CATHARON, FD received all rights to "the enforcement, assignment, licensing,
26 commercialization, exploitation, use, practice, and/or sale of the Patents." FD agreed to pay

1 CATHARON forty-five percent (45%) of any profits generated from his enforcement, assignment,
2 licensing, commercialization, exploitation, use, practice, and/or sale of the Patents.

3 33. The Patent Assignment provided for CATHARON and FD to form a limited
4 liability company to which FD would assign the Patents so that the limited liability company could
5 prosecute the Patents. The Patent Assignment further provided that the terms of the operating
6 agreement for the to-be-formed limited liability company would replace the terms of the Patent
7 Assignment.

8 34. On February 5, 2013, CATHARON and FD formed Catharon Intellectual Property,
9 LLC ("CIP"), a Texas limited liability company.

10 35. According to CIP's Company Agreement, FD and CATHARON each assigned to
11 CIP "all right, title and interest in and to the [Patents]" and agreed "to share any and all revenue
12 generated from [CIP's] enforcement, assignment, licensing, commercialization, exploitation, use,
13 practice and/or sale of the Patents...."

14 36. According to CIP's Company Agreement, FD and CATHARON each own a fifty-
15 percent (50%) membership interest in CIP. FD is the Managing Member, however.

16 37. As the Managing Member, FD has the "exclusive and complete authority and
17 discretion to manage the operations and affairs of [CIP] and to make all decisions regarding the
18 business of [CIP]."

19 38. According to CIP's Company Agreement, FD has the exclusive and complete
20 authority and discretion over the "enforcement, assignment, licensing, commercialization,
21 exploitation, use, practice, and/or sale of the Patents...."

22 39. CIP's Company Agreement does contain any terms that prohibit or restrict FD from
23 licensing, on behalf of CIP, the Patents to potential competitors of CATHARON.

24 40. CIP's Company Agreement states that it "constitutes the entire agreement and
25 understanding among [CATHARON and FD] with respect to [CIP] and supersedes all prior
26 agreements and understandings...."

1 41. CIP's Company Agreement is silent as to whether CATHARON still holds a non-
2 exclusive license or any other rights to the technology covered by the Patents.

3 42. CATHARON's 2013 Offering Memorandum represents as a risk factor the "Possible
4 Loss ... of Intellectual Property Rights."

5 43. The 2013 Offering Materials do not disclose, however, that CATHARON previously
6 assigned away "all right, title and interest in, and to the Patents."

7 44. The 2013 Offering Materials do not disclose to offerees and investors that the loss of
8 CATHARON's intellectual property rights is not just "possible" but actually occurred by virtue of
9 the January 9, 2013 Patent Assignment, and the February 5, 2013 Company Agreement of CIP.

10 45. The 2013 Offering Memorandum represents to offerees and investors that
11 CATHARON "enters into confidentiality or license agreements with its employees, consultants and
12 vendors, and it generally controls access to and distribution of its software, documentation and other
13 proprietary information."

14 46. The 2013 Offering Materials do not disclose, however, that FD, not CATHARON,
15 has the "exclusive and complete authority and discretion" to manage the "enforcement, assignment,
16 licensing, commercialization, exploitation, use, practice, and/or sale of the Patents...." The 2013
17 Offering Materials do not disclose that CATHARON has no legal authority to control access to and
18 distribution of the technology covered by the Patents because that authority resides in CIP and its
19 Managing Member, FD.

20 47. The 2013 Business Plan represents to offerees and investors that the Patents "create a
21 formidable barrier to entry for prospective competitors."

22 48. The 2013 Offering Materials do not disclose, however, that by virtue of the Patent
23 Assignment and CIP's Company Agreement, nothing prohibits or restricts CIP from licensing the
24 Patents to potential competitors of CATHARON.

2. CATHARON's Undisclosed Agreement To Share 50% Of Any Profits Derived From The VADelta Technology With FD.

49. As alleged above, the 2013 Business Plan projects that CATHARON's licensing of VADelta will generate \$2 billion in revenue within 3 years, and states, "Catharon will be returning nearly half its earnings after taxes to its investors as dividends."

50. CIP's Company Agreement, however, entitles FD to fifty-percent (50%) of the profits from the "licensing, commercialization, exploitation, use, practice, and/or sale of the Patents...."

51. The 2013 Offering Materials do not disclose CATHARON's obligation to share profits with FD from the licensing and other uses of the Patents.

52. The 2013 Offering Memorandum, Business Plan and February 1, 2013 Wiki article CATHARON do not contain any disclosures about FD and CIP.

53. The September 20, 2013 Wiki article states: "Earlier this year Catharon Software Corporation set up Catharon Intellectual Properties LLC (CIP), a Texas LLC, with partners with significant intellectual property experience and a history of successes in the field." The article does not identify those "partners."

54. The September 20, 2013 Wiki article does not disclose CATHARON's (i) assignment of the Patents, or (ii) CATHARON'S obligation to share fifty-percent of any profits generated from the Patents with FD.

3. CATHARON's Schedule For Launching VADelta Into The Market

55. Since 2003, Respondents have repeatedly represented to offerees and investors that CATHARON would launch its VADelta technology within months.

56. For instance, CATHARON's Offering Memorandum dated May 14, 2003 represented that CATHARON'S technology was "fully functional," and "currently performing up to its expectations...."

57. CATHARON's Business Plan dated May 14, 2003 ("2003 Business Plan") similarly represented that CATHARON's technology was "finished, not in R & D." The 2003 Business Plan

1 stated that CATHARON was then seeking a "final round of \$3 million to assist us in bringing our
2 consumer-licensed product to the general market within six months of receipt of funding."

3 58. CATHARON's 2003 Business Plan represented investors would receive returns
4 within 3 years of 1,572%.

5 59. In March 2004, Respondents induced two investors in Sedona, Arizona to purchase
6 \$12,500 of CATHARON's common stock by telling them that CATHARON was close to launching its
7 software.

8 60. In early 2007, MICHAEL A. FEINBERG induced another Sedona resident to
9 purchase \$50,000 of common stock by representing that CATHARON would launch its software in
10 the summer of 2007 and he would quickly make a 400% to 500% return on his principal.

11 61. On June 6, 2008, another Sedona resident purchased \$50,000 of common stock
12 based on Respondents' representation that CATHARON would launch its software within 12 to 18
13 months.

14 62. On August 16, 2011, BETSY A. FEINBERG wrote to that same Sedona investor
15 referenced in the preceding paragraph and offered to sell another \$100,000 of common stock in
16 CATHARON. She wrote: "We're so excited! After all these many months of preparation, we are
17 scheduled to launch VADelta on December 16th of this year [2011]."

18 63. In each of its four Offering Memoranda dated March 25, 2002; May 14, 2003; May
19 26, 2010; and April 6, 2013, CATHARON stated: "The Company's ability to realize sufficient
20 cash flow to cover its overhead for the next 12 months is dependent primarily upon the extent to
21 which VADelta [or TenCORE Net] is accepted by Internet users as an alternative to established
22 programming languages."

23 64. Implicit in that statement was the representation that CATHARON would release its
24 technology within 12 months from the date of the Offering Memorandum containing the statement.

25 65. Despite Respondents' repeated representations since 2003 that CATHARON would
26 launch its VADelta technology within months, CATHARON has never done so.

1 66. The 2013 Business Plan represents that CATHARON "is seeking a final round of
2 \$500,000 to assist us in bringing our consumer-licensed product to the general market within eight
3 months of receipt of funding.... Formal release of VADelta and VADeltaFlex is expected by the
4 end of 2013."

5 67. Given CATHARON's repeated failures over the previous 10 years to launch its
6 technology, its projection in the 2013 Business Plan that it would launch VADelta by the end of
7 2013 lacks a reasonable factual basis.

8 68. CATHARON's 2013 Offering Memorandum represents that the VADelta
9 technology is "fully functional," and "currently performing up to its expectations...." It further
10 represents, "[CATHARON] believes that this technology, given adequate financial resources and
11 successful marketing, will allow it to compete in the market with microcomputer language systems
12 manufacturers, such as Microsoft...."

13 69. In its previous Offering Memoranda dated March 25, 2002, May 14, 2003, and May
14 26, 2010, through which CATHARON raised \$6 million, CATHARON made the identical
15 representations that:

- 16 • its technology was then "fully functional," and "currently performing up to its
17 expectations...."; and
- 18 • "[CATHARON] believes that this technology, given adequate financial resources
19 and successful marketing, will allow it to compete in the market with
20 microcomputer language systems manufacturers, such as Microsoft...."

21 70. Despite these representations dating back to 2002, CATHARON has never entered,
22 let alone competed in, the market for computer languages.

23 71. Given CATHARON's repeated historical failures to enter and compete in the
24 market for computer languages, its stated belief that it will be able to compete with manufacturers
25 such as Microsoft lacks a reasonable factual basis.

4. CATHARON's Financial Statements

72. Attached as exhibits to CATHARON'S 2010 and 2013 Offering Memoranda are financial statements that CATHARON states it prepared but which have not been audited. CATHARON represents, "[T]he Company believes these statements to be accurate...."

73. CATHARON lacks a reasonable factual basis for that representation for at least two reasons.

74. First, the exhibits state that CATHARON prepared its financial statements on a cash basis rather than an accrual basis of accounting.

75. The financial statements' cash flow and balance sheet schedules, however, account for numerous categories of assets and liabilities on an accrual basis.

76. The second reason why CATHARON lacks a reasonable factual basis for asserting that its financial statements are accurate are the inconsistencies between those statements' report of CATHARON'S total assets from 2005 through 2012 and the total assets CATHARON reported to the State of Delaware, under the penalty of perjury, for the same years in its tax filings. The following table illustrates the inconsistencies:

Year	Total Assets CATHARON Stated in its financial statements attached to 2010 Offering Memorandum	Total Assets CATHARON Stated in its financial statements attached to 2013 Offering Memorandum	Total Assets CATHARON Stated in its Delaware Tax Filings
2005	\$2,981,369	\$2,981,369	\$1,353
2006	\$3,284,551	\$3,284,551	\$1,357
2007	\$3,291,999	\$3,291,999	\$1,380
2008	\$3,514,243	\$3,514,243	\$1,380
2009	\$3,758,695	\$3,758,695	\$31,688
2010		\$4,027,544	\$32,000
2011		\$4,524,612	\$44,054

1	2012		\$4,640, 251	\$90,205
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2 77. According to CATHARON's Offering Memoranda dated (i) March 25, 2002; (ii)
3 May 14, 2003; (iii) May 26, 2010; and (iv) April 5, 2013, BETSY A. FEINBERG and MICHAEL
4 A. FEINBERG "have, and after completion of this offering will continue to exercise, effective
5 control of [CATHARON]."

6 VIOLATION OF A.R.S. § 44-1841

7 (Offer and Sale of Unregistered Securities)

8 78. From on or about April 14, 2003, Respondents have been offering or selling
9 securities in the form of common stock of CATHARON, within or from Arizona.

10 79. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
11 Securities Act.

12 80. This conduct violates A.R.S. § 44-1841.

13 V.

14 VIOLATION OF A.R.S. § 44-1842

15 (Transactions by Unregistered Dealers or Salesmen)

16 81. Respondents are offering or selling securities within or from Arizona while not
17 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

18 82. This conduct violates A.R.S. § 44-1842.

19 VI.

20 VIOLATION OF A.R.S. § 44-1991

21 (Fraud in Connection with the Offer or Sale of Securities)

22 83. In connection with the offer or sale of securities within or from Arizona,
23 CATHARON is, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)
24 making untrue statements of material fact or omitting to state material facts that are necessary in
25 order to make the statements made not misleading in light of the circumstances under which they are
26 made; or (iii) engaging in transactions, practices, or courses of business that operate or would

1 operate as a fraud or deceit upon offerees and investors. CATHARON's conduct includes, but is not
2 limited to, the following:

3 a) Representing in the 2013 Offering Materials that CATHARON holds the
4 Patents when it had previously assigned "all right, title and interest in and to the [Patents]" to FD
5 and CIP;

6 b) Representing in the 2013 Offering Materials that CATHARON will license
7 the patented VADelta technology to generate revenue, when in fact CIP holds all rights to the
8 "licensing, commercialization, exploitation, use, practice, and/or sale of the Patents....";

9 c) Representing in the 2013 Offering Materials that CATHARON expects to
10 generate \$2 billion in revenue and provide a 668% return to investors within 3 years, when
11 according to CATHARON's own financial statements, it has not made a single sale or generated
12 any revenue since 2004;

13 d) Representing in the 2013 Offering Materials that CATHARON has the
14 ability to "effectively preclude competitors from introducing software products and services that
15 make unlicensed use of [CATHARON's] proprietary techniques," when under the terms of CIP's
16 Company Agreement, at FD's complete discretion, CIP can license the Patents to potential
17 competitors of CATHARON;

18 e) Representing in the 2013 Offering Materials as a risk factor CATHARON's
19 "Possible Loss ... of Intellectual Property Rights," when by virtue of CATHARON's Patent
20 Assignment and the CIP Company Agreement CATHARON had already lost its intellectual
21 property rights;

22 f) Failing to disclose in the 2013 Offering Materials that CATHARON is
23 obligated to share with FD fifty-percent (50%) of any profits from the "enforcement, assignment,
24 licensing, commercialization, exploitation, use, practice, and/or sale of the Patents....";
25
26

1 g) Representing in each of its Offering Memoranda dated March 25, 2002;
2 May 14, 2003; May 26, 2010; and April 6, 2013, that CATHARON's technology will allow it to
3 compete with Microsoft without having a reasonable factual basis for that statement;

4 h) Representing in its 2003 Business Plan that CATHARON was then in its
5 "final round" of raising "\$3 million to assist us in bringing our consumer-licensed product to the
6 general market within six months of receipt of funding;"

7 i) Inducing offerees to invest since 2003 by repeatedly representing to them
8 verbally and in writing that CATHARON would launch its technology within months of their
9 investment and they would receive returns within 3 years of between 400% and 1,572%, without
10 having a reasonable factual basis for the launch date or the returns CATHARON would pay
11 investors;

12 j) Representing in the 2013 Business Plan, in nearly identical language to its
13 2003 Business Plan, that CATHARON is in its "final round" of raising "\$500,000 to assist us in
14 bringing our consumer-licensed product to the general market within eight months of receipt of
15 funding" without disclosing that since 2003, CATHARON has repeatedly represented it would
16 launch its technology within months and then failed to do so each time;

17 k) Representing in the 2013 Business Plan that CATHARON expected to
18 launch VADelta by the end of 2013 without having a reasonable factual basis to project such a
19 launch date; and

20 l) Representing in the 2010 and 2013 Offering Memoranda CATHARON's
21 stated belief that its financial statements are accurate without having a reasonable factual basis
22 for that belief as demonstrated by the inconsistencies between those statements' reports of
23 CATHARON'S total assets from 2005 through 2012 and the total assets CATHARON reported
24 to the State of Delaware for the same years in its tax filings.

25 84. This conduct violates A.R.S. § 44-1991.
26

VII.

Control Person Liability Pursuant to A.R.S. § 44-1999

85. From March 25, 2002 through the present, BETSY A. FEINBERG has been a Director and the Chief Executive Officer of CATHARON.

86. From March 25, 2002 through the present, MICHAEL A. FEINBERG has been a Director and the President and Treasurer of CATHARON.

87. According to CATHARON's Offering Memoranda dated (i) March 25, 2002; (ii) May 14, 2003; (iii) May 26, 2010; and (iv) April 5, 2013, BETSY A. FEINBERG and MICHAEL A. FEINBERG "have, and after completion of this offering will continue to exercise, effective control of [CATHARON]."

88. From March 25, 2002 through the present, BETSY A. FEINBERG and MICHAEL A. FEINBERG directly or indirectly controlled CATHARON within the meaning of A.R.S. § 44-1999. Therefore, BETSY A. FEINBERG and MICHAEL A. FEINBERG are jointly and severally liable to the same extent as CATHARON for its violations of A.R.S. § 44-1991 from March 25, 2002 through the present.

VIII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondents CEASE AND DESIST from any violations of the Securities Act.

1 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
2 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

3 IT IS FURTHER ORDERED that if a request for hearing is made, this Temporary Order
4 shall remain effective from the date a hearing is requested until a decision is entered unless
5 otherwise ordered by the Commission.

6 IT IS FURTHER ORDERED that this Order shall be effective immediately.

7 IX.

8 REQUESTED RELIEF

9 The Division requests that the Commission grant the following relief:

10 1. Order Respondents to permanently cease and desist from violating the Securities Act
11 pursuant to A.R.S. §§ 44-2032, 44-1961 and 44-1962;

12 2. Order Respondents to take affirmative action to correct the conditions resulting from
13 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
14 A.R.S. §§ 44-2032, 44-1961 and 44-1962;

15 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
16 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

17 4. Order Respondents to pay the state of Arizona administrative penalties, pursuant to
18 A.R.S. §§ 44-1961 and 44-1962;

19 5. Order that the marital community of BETSY A. FEINBERG and MICHAEL A.
20 FEINBERG be subject to any order of restitution, rescission, administrative penalties, or other
21 appropriate affirmative action pursuant to A.R.S. § 25-215; and

22 6. Order any other relief that the Commission deems appropriate.

23 X.

24 HEARING OPPORTUNITY

25 Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-
26 4-307. **If a Respondent requests a hearing, the requesting Respondent must also answer this**

1 **Temporary Order and Notice.** A request for hearing must be in writing and received by the
2 Commission within 20 days after service of this Temporary Order and Notice. The requesting
3 Respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation
4 Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained
5 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
6 www.azcc.gov/divisions/hearings/docket.asp.

7 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
8 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
9 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
10 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
11 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
12 with written findings of fact and conclusions of law. A permanent Order may include ordering
13 restitution, assessing administrative penalties, or other action.

14 If a request for hearing is not timely made, the Division will request that the Commission
15 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
16 may include ordering restitution, assessing administrative penalties, or other relief.

17 Persons with a disability may request a reasonable accommodation such as a sign language
18 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
19 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
20 Requests should be made as early as possible to allow time to arrange the accommodation.

21 **XI.**

22 **ANSWER REQUIREMENT**

23 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting
24 Respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket
25 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within
26 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions

1 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
2 web site at www.azcc.gov/divisions/hearings/docket.asp.

3 Additionally, the answering respondent must serve the Answer upon the Division.
4 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
5 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
6 Arizona, 85007, addressed to James D. Burgess.

7 The Answer shall contain an admission or denial of each allegation in this Temporary
8 Order and Notice and the original signature of the answering Respondent or the Respondent's
9 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
10 of an allegation. An allegation not denied shall be considered admitted.

11 When the answering Respondent intends in good faith to deny only a part or a qualification
12 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
13 admit the remainder. A Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an
15 Answer for good cause shown.

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 26 day of
17 February, 2014.

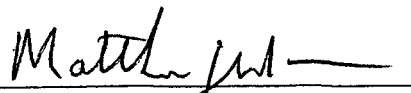
18 
19 Matthew J. Neufert
20 Director of Securities
21
22
23
24
25
26

Exhibit 10

Catharon Software Corporation

File No. 8461

Michael Feinberg, Custodian of Records Catharon Software

March 4, 2014

Coash & Coash, Inc.

1802 N. 7th Street

Phoenix, AZ 85006

602-258-1440

www.coashandcoash.com



Original File 03-04-14 Feinberg_Michael.txt

Min-U-Script® with Word Index

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1 BEFORE THE ARIZONA CORPORATION COMMISSION
2 SECURITIES DIVISION
3
4
5 In the Matter of: }
6 CATHARON SOFTWARE CORPORATION } FILE NO. 8461
7 }
8
9
10
11
12 EXAMINATION UNDER OATH OF MICHAEL FEINBERG
13 CUSTODIAN OF RECORDS OF
14 CATHARON SOFTWARE CORPORATION
15 Phoenix, Arizona
16 March 4, 2014
17
18
19 COASH & COASH, INC.
20 Court Reporting, Video & Videoconferencing
21 Phoenix, Arizona 85004-1481
22 By: GARY W. HILL, RMR, CRR
23 Certified Reporter
24 Certificate No. 50812
25 Prepared for:
SECURITIES DIVISION

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13 from Tanya M. Miller to James
14 D. Burgess
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16 from Bruce R. Heurlin to James
17 D. Burgess
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21
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1 EXAMINATION UNDER OATH OF MICHAEL FEINBERG
2 was taken on March 4, 2014, commencing at 2:35 p.m., at
3 the Arizona Corporation Commission, Securities Division,
4 1300 West Washington Street, Phoenix, Arizona, before
5 GARY W. HILL, RMR, Certified Reporter No. 50812 for the
6 State of Arizona.
7
8 APPEARANCES:
9
10 For the Securities Division:
11 Mr. James D. Burgess, Enforcement Attorney
12 ACC, Securities Division
13 1300 West Washington Street, Third Floor
14 Phoenix, Arizona 85007
15 For Catharon Software Corporation, Michael Feinberg and
16 Betsy Feinberg:
17 HEURLIN SHERLOCK
18 By Mr. Bruce R. Heurlin
19 1636 N. Swan Road, Suite 200
20 Tucson, Arizona 85712
21
22 ALSO PRESENT:
23 Ms. Annalisa Weiss, Special Investigator
24
25

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1 MICHAEL FEINBERG,
2 a witness herein, having been first duly sworn by the
3 Certified Reporter to speak the truth and nothing but
4 the truth, was examined and testified as follows:
5
6 EXAMINATION
7 BY MR. BURGESS:
8 Q. Mr. Feinberg, as you're already well aware,
9 this is part of an inquiry by the Securities Division of
10 the Arizona Corporation Commission in the matter of
11 Catharon Software Corporation, et al., in order to
12 determine if there has been full compliance with the
13 Arizona Securities Act and/or the Arizona Investment
14 Management Act. The information obtained today may
15 reveal violations of statutes outside these two Acts.
16 Persons present are myself, James Burgess,
17 counsel for the Securities Division, and special
18 investigator Annalisa Weiss, also with the Securities
19 Division.
20 Mr. Heurlin, please identify yourself and your
21 clients for the record.
22 MR. HEURLIN: Bruce Heurlin, law firm of
23 Heurlin Sherlock, 1636 North Swan Road, Suite 200,
24 Tucson, Arizona 85712. I'm representing Catharon
25 Software Corporation, Michael Feinberg and Betsy

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1 Feinberg.
2 BY MR. BURGESS:
3 Q. Mr. Feinberg, you have the right to refuse to
4 answer any questions if you think the answer may tend to
5 incriminate you personally. You have the right to
6 refuse to produce any private papers that you feel may
7 tend to incriminate you. You do not, however, have the
8 right to refuse to produce any corporate papers based
9 upon any claim of self-incrimination.
10 We went over the ground rules for your
11 examination earlier in your own examination under oath.
12 You are here to testify as the custodian of records of
13 Catharon Software Corporation in this particular
14 examination under oath. Do you understand that?
15 A. Yes.
16 MR. HEURLIN: I want to put on the record that
17 custodian of records forms were signed, and Mr. Feinberg
18 disavows and revokes those forms.
19 BY MR. BURGESS:
20 Q. Mr. Feinberg, are you the authorized custodian
21 of records for Catharon Software Corporation?
22 A. Fifth Amendment.
23 MR. BURGESS: We don't believe there's any
24 basis for the custodian of records of Catharon Software
25 Corporation to invoke the Fifth Amendment privilege.

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1 The corporation has no Fifth Amendment privilege, and
2 it's improper and obstructionist for Mr. Feinberg to be
3 invoking the privilege and obstructing this
4 investigation based on a bogus privilege claim.
5 MR. HEURLIN: Do you want me to respond to
6 that?
7 MR. BURGESS: We're going to proceed. You can
8 respond, but we're going to proceed, and we're going to
9 proceed towards an enforcement action at which we're
10 going to seek attorneys' fees and costs.
11 MR. HEURLIN: Do you want me to respond to
12 that?
13 MR. BURGESS: Yes.
14 MR. HEURLIN: The corporation is not invoking
15 the Fifth Amendment. Mr. Feinberg is invoking his Fifth
16 Amendment right.
17 MR. BURGESS: Which he is entitled to do as an
18 individual, but not as a custodian of records of
19 Catharon Software Corporation.
20 MR. HEURLIN: He has revoked those forms and
21 denies the role as custodian of records.
22 BY MR. BURGESS:
23 Q. Mr. Feinberg, when you signed the custodian of
24 record affidavit that accompanied the production that
25 your previous lawyer, Tanya Miller, made on January 29,

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1 2013, you were represented -- I'm sorry, Catharon
2 Software Corporation was represented by Ms. Miller's
3 firm, wasn't it?
4 A. Fifth Amendment.
5 Q. Do you have the authority to certify the
6 records of Catharon Software Corporation, Mr. Feinberg?
7 A. Fifth Amendment.
8 (Exhibit 1 was marked for identification.)
9 MS. WEISS: Do we need to separate the other
10 exhibits so we don't get them messed up?
11 MR. BURGESS: Thank you.
12 BY MR. BURGESS:
13 Q. Mr. Feinberg, have you seen a copy of what has
14 been marked Exhibit No. 1 prior to today?
15 A. Fifth Amendment.
16 Q. Isn't this the cover letter and subpoena duces
17 tecum that was issued to and served upon Catharon
18 Software Corporation in this matter?
19 A. Fifth Amendment.
20 Q. And isn't it true that with respect to this
21 subpoena, Catharon Software Corporation was initially
22 represented by Attorney Tanya Miller of the Gabroy
23 Rollman firm in Tucson?
24 A. Fifth Amendment.
25 Q. And isn't it true that Catharon Software

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1 Corporation produced well over a hundred pages of
2 documents through Ms. Miller's firm in partial response
3 to the subpoena?
4 A. Fifth Amendment.
5 Q. And isn't it true that you signed in
6 connection with that production an Affidavit of
7 Custodian of Records to accompany Catharon Software
8 Corporation's production through Ms. Miller's firm?
9 A. Fifth Amendment.
10 (Exhibit 2 was marked for identification.)
11 MR. BURGESS: To clarify for the record, I
12 think I misspoke a short while ago when I referenced a
13 production by Catharon Software Corporation through
14 Ms. Miller's firm on January 29th. It appears it was in
15 fact January 27th.
16 BY MR. BURGESS:
17 Q. Mr. Feinberg, have you seen the document
18 that's been marked as Exhibit No. 2 prior to today?
19 A. Fifth Amendment.
20 Q. Isn't this Ms. Miller's January 27, 2014,
21 letter accompanying the production, the partial
22 production of documents that Catharon Software
23 Corporation made on that day?
24 A. Fifth Amendment.
25 Q. And isn't it true that Catharon Software

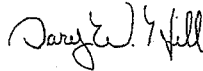
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<p>1 Corporation produced in response to the subpoena duces 2 tecum marked as Exhibit No. 1, documents Bates-stamped 3 as numbers CSC 00001 through 00166? 4 A. Fifth Amendment. 5 Q. As well as an Affidavit of Custodian of 6 Records executed by you, sir; isn't that true? 7 A. Fifth Amendment. 8 Q. And isn't it true as Catharon Software 9 Corporation's custodian of records, that you consulted 10 with Ms. Miller prior to the time that she made the 11 production on January 27 to this office? 12 A. Fifth Amendment. 13 (Exhibit 3 was marked for identification.) 14 BY MR. BURGESS: 15 Q. Mr. Feinberg, do you recognize the document 16 that has been marked and handed to you as Exhibit No. 3? 17 A. Fifth Amendment. 18 MR. BURGESS: Counsel, I fail to understand -- 19 and perhaps you can clarify for me -- how it is that 20 Mr. Feinberg answering the question whether he has seen 21 a letter, this letter written by you, would tend to 22 incriminate him. Can you illuminate on that issue? 23 MR. HEURLIN: No, I would have to talk with 24 him. 25 BY MR. BURGESS:</p>	<p>1 business? 2 A. Fifth Amendment. 3 Q. Were the records submitted by Mr. Heurlin's 4 firm and Ms. Miller's firm on behalf of CSC prepared or 5 obtained by personnel or representatives of CSC at or 6 near the time of the acts, conditions or events 7 reflected in those records? 8 A. Fifth Amendment. 9 Q. Did CSC keep those records in the course of 10 its regularly conducted business activities? 11 A. Fifth Amendment. 12 Q. Did CSC keep those records pursuant to its 13 regular business practices? 14 A. Fifth Amendment. 15 Q. Have you failed to produce any records covered 16 by the subpoena duces tecum? 17 A. Fifth Amendment. 18 Q. Has CSC failed to produce any records covered 19 by the subpoena? 20 A. Fifth Amendment. 21 MR. BURGESS: Okay. We'll take it up with the 22 Judge. 23 MR. HEURLIN: Okay. Mr. Feinberg reserves the 24 right to read and sign the transcript of this 25 examination, and if not allowed to, disavows everything</p>
Page 10	Page 12
<p>1 Q. Mr. Feinberg, isn't it true that what has been 2 marked as Exhibit No. 3 is a letter authored by 3 Mr. Heurlin, your counsel, dated February 25, 2014? 4 A. Are you asking me if I'm seeing that? 5 Q. I'm asking you, isn't it true that this 6 document marked as Exhibit No. 3 -- 7 A. Fifth Amendment. 8 Q. -- is a letter written by Mr. Heurlin and 9 dated February 25, 2014? 10 A. Fifth Amendment. 11 Q. Isn't it true that this letter marked as 12 Exhibit No. 3 from Mr. Heurlin accompanied the 13 production of documents Bates labeled CSC 000167 through 14 Bates number CSC 013256? 15 A. Fifth Amendment. 16 Q. Are the records submitted by Ms. Miller on 17 January 27 and Mr. Heurlin with his February 25 letter 18 true copies of all the records under your possession or 19 control that are responsive to the subpoena duces tecum 20 directed to the custodian of records of CSC? 21 A. Fifth Amendment. 22 Q. Were the records submitted to this office by 23 Mr. Heurlin's office and by Ms. Miller's office on CSC's 24 behalf prepared or obtained by personnel or 25 representatives of CSC in the ordinary course of its</p>	<p>1 that was said in the examination. 2 MR. BURGESS: He didn't say anything except to 3 assert his Fifth Amendment privilege. 4 MR. HEURLIN: The transcript says what it 5 says. 6 MR. BURGESS: I would love it if he disavowed 7 his Fifth Amendment privilege. Take another round at 8 this. 9 MR. HEURLIN: Okay. Are we done for the day? 10 MR. BURGESS: We are done for today, to be 11 resumed at another time. We can go off the record now. 12 (TIME NOTED: 2:50 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 STATE OF ARIZONA }
2 COUNTY OF MARICOPA } ss.
3

4 BE IT REMEMBERED that the foregoing
5 examination under oath was taken by me, GARY W. HILL,
6 Certified Reporter No. 50812 for the State of Arizona;
7 that the witness before testifying was duly sworn by me
8 to testify to the whole truth and nothing but the truth;
9 that the questions propounded by counsel and the answers
10 of the witness thereto were taken down by me in
11 shorthand and thereafter transcribed into typewriting
12 under my direction, and that the foregoing pages of
13 typewritten matter contain a full, true, and accurate
14 transcript of all proceedings and testimony had and
15 adduced upon the taking of said examination under oath,
16 all to the best of my skill and ability.

17 I FURTHER CERTIFY that I am not related to nor
18 employed by any of the parties hereto, and have no
19 interest in the outcome.

20 DATED at Phoenix, Arizona, this 7th day of
21 March, 2014.

22 
23

24 GARY W. HILL, RMR, CRR
25 Certificate No. 50812

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	85712 (1) 4:24			
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under (3) 5:11,14;				

Exhibit 11

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 714-8120
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

March 7, 2014

VIA EMAIL & U.S. MAIL

Bruce Heurlin, Esq.
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096

Re: Catharon Software Corporation, Betsy A. Feinberg and Michael A. Feinberg

Dear Bruce:

We are writing in an effort to avoid having to file an action in the Superior Court to enforce the subpoena for testimony we served on Catharon Software Corporation's ("Catharon") Custodian of Records ("COR"). On February 13, 2014, you and I discussed that the Securities Division would take the examination under oath of Catharon's COR. You offered March 4th as the date for that examination, and our office subsequently served a subpoena requiring Catharon's COR to appear and testify on that date.

On March 4th, you appeared on behalf of Catharon and produced Michael Feinberg as its COR. Mr. Feinberg is Catharon's President and Treasurer according to Catharon's Delaware corporate filings¹ and numerous offering documents it has used to solicit investors. Previously, on January 27, 2014, Mr. Feinberg provided an Affidavit of Custodian of Records for Catharon to accompany the partial production of documents and information it made on that date. At the March 4th examination under oath, however, you stated: (i) Catharon and Mr. Feinberg "revoked" his prior COR Affidavit, and (ii) Mr. Feinberg was invoking the Fifth Amendment privilege against self-incrimination and would not answer questions as Catharon's COR.

I objected to the refusal of Catharon's COR to testify for two reasons. First, Catharon and Mr. Feinberg, in his capacity as COR, waived any potential Fifth Amendment privilege when he provided his Affidavit of January 27, 2014, in which he testified about the documents Catharon produced on that date. Having waived any potential privilege, neither Catharon nor Mr. Feinberg as its COR may now "revoke" that waiver. If you have any authority supporting

¹ Catharon has never registered to do business in Arizona even though since at least March 2002 it has been headquartered in and operated from locations in Arizona.

your clients' purported "revocation" of their prior waiver, please provide it to us by March 11, 2014, so we may consider it.

The second reason I objected is because the law "is well settled that no [Fifth Amendment] privilege can be claimed by the custodian of corporate records...." *Bellis v. United States*, 417 U.S. 85, 100 (1974) (holding that partner in small partnership could not properly refuse to produce records); *Braswell v. United States*, 487 U.S. 99, 113 (1988) ("A custodian may not resist a subpoena for corporate records on Fifth Amendment grounds.").

You asserted that *United States v. Doe*² supports your position that Catharon's COR may invoke the Fifth Amendment privilege and refuse to testify. *Doe* is inapplicable, however, because it did not involve the assertion of the Fifth Amendment privilege by a corporation's custodian of records. Rather, *Doe* involved subpoenas that the government served on the owner of several sole proprietorships. *Id.* at 606-07. *Doe* does not provide any basis for the refusal by Catharon's COR to testify because Catharon is a corporation, not a sole proprietorship.

As the U.S. Supreme Court explained in *Braswell*, for purposes of the Fifth Amendment, corporations are treated differently:

Had petitioner conducted his business as a sole proprietorship, *Doe* would require that he be provided the opportunity to show that his act of production would entail testimonial self-incrimination. But petitioner has operated his business through the corporate form, and we have long recognized that, for purposes of the Fifth Amendment, corporations and other collective entities are treated differently from individuals.³

In *Braswell*, the Supreme Court held that a custodian of records may not resist a subpoena concerning the corporation's records on the ground that complying with it would violate his or her Fifth Amendment right against self-incrimination. 487 U.S. at 108-09. This was true even though the custodian in *Braswell* was the president and sole corporate shareholder.

Another instructive case is *United States v. Milligan*, 371 F. Supp.2d 1127 (D. Ariz. 2005). In *Milligan*, the court held that the custodian of records of an alleged one-man corporation could not assert the Fifth Amendment privilege in response to a summons directing him to produce documents and testify. *Id.* at 1129-30. The court directed the custodian to produce the corporate records and testify as to their identity and authenticity. *Id.* at 1130.


The rule that a custodian may not resist a subpoena for corporate records on Fifth Amendment grounds applies with even more force to Catharon than it did in *Braswell* and *Milligan* because Catharon is not a one-man corporation. Rather, according to its communications with offerees and investors, Catharon has 10 employees and over 300 shareholders. Catharon must produce a COR to testify, whether that is Mr. Feinberg or another authorized person.

² *United States v. Doe*, 465 U.S. 605 (1984).

³ *Id.* at 104.

Please let us know by 10:00 a.m. on March 11th whether Mr. Feinberg, in his capacity as Catharon's Custodian of Records, will withdraw his Fifth Amendment objections and agree to testify in that capacity. Alternatively, please let us know whether Catharon will appoint a different Custodian of Records who will testify.

Sincerely,



James D. Burgess

Cc: Julie A. Coleman, Chief Counsel of Enforcement
Special Investigator Annalisa Weiss

Exhibit 12

HS

HEURLIN SHERLOCK

1636 N. Swan Road, Ste. 200
Tucson, Arizona 85712-4096
Telephone 520.319.1200
Facsimile 520.319.1221
www.AZtopLawyers.com
bheurlin@AZtopLawyers.com

March 13, 2014

James D. Burgess (jburgess@azcc.gov)
Enforcement Attorney
Arizona Corporation Commission, Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007

Re: Catharon Software Corporation, Betsy A. Feinberg and Michael A. Feinberg

Dear Jamie:

This responds to your March 7, 2014, letter.

The arguments that you present ignore the critical fact that Catharon did not conduct business as a "corporation." In addition to the actions that were taken and not taken to file and/or register Catharon as a corporation in any jurisdiction, Catharon did not conduct its business in the corporate format. Most, if not all, corporate formalities were ignored. Catharon operated as a proprietorship. Footnote 1 to your letter recognizes that.

There is no "custodian of records" for Catharon because no person ever undertook those duties and obligations. Michael Feinberg is not Catharon's custodian of records. There is no such person.

As you know, Betsy and Michael Feinberg invoked their Fifth Amendment rights. Catharon did not invoke any Fifth Amendment right. You suggest that if such remains the case, as it will, Catharon has to declare an alternative custodian of records. Frankly, I do not see how you expect Catharon to do that. You are asking Catharon to designate an unknown third-party as the custodian of records, who would have absolutely no knowledge of Catharon records.

Neither Betsy or Michael Feinberg will testify as the Catharon custodian of records. Both have and will continue to invoke their Fifth Amendment rights against self-incrimination.

As I stated, Respondents will not object to the admission of Catharon documents into evidence, without foundation / authentication.

Please advise me as to how you intend to proceed.

Sincerely,

HEURLIN SHERLOCK

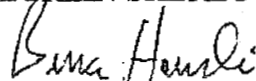

Bruce R. Heurlin

Exhibit 13

DOCKETED

MAR 14 2014



0000151783

THE LAW FIRM OF
HEURLIN SHERLOCK

1636 N. SWAN ROAD, STE. 200
TUCSON, ARIZONA 85712-4096
TEL 520.319.1200
FAX 520.319.1221

DOCKETED BY

RECEIVED

AZ CORP COMMISSION
DOCKET CONTROL

2014 MAR 14 PM 12 48

ORIGINAL

Bruce R. Heurlin, SBN 003214, bheurlin@aztoplawyers.com
Thomas C. Piccioli, SBN 012546, tpiccioli@aztoplawyers.com
Attorneys for Respondents

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:

Catharon Software Corporation, a Delaware
corporation,Betsy A. Feinberg and Michael A. Feinberg,
husband and wife,
Respondents.**DOCKET NO. S-20905A-14-0061****ANSWER TO TEMPORARY
ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING
AND
REQUEST FOR HEARING****Respondents' Answer**

Respondents Catharon Software Corporation ("Catharon"), Betsy A. Feinberg, and Michael A. Feinberg, answer the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Notice") of the Securities Division ("Division") of the Arizona Corporation Commission as follows.

No Catharon participant has lost money. Respondents deny the implication that Arizona securities laws applied. Respondents deny that they have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"). If found to have violated any law, Respondents' violation was unknowing and an act of omission. At all times, Respondents acted in good faith.

Respondents' answers correlate to the paragraph numbers in the Notice.

Respondents request a hearing.

I.
JURISDICTION

1
2
3 1. Deny.

4 **II.**
5 **RESPONDENTS**

6 2. Admit.

7 3. Admit.

8 4. Admit.

9 5. Admit.

10 6. Admit.

11 7. Paragraph 7 contains no allegations against Respondents.

12 **III.**
13 **FACTS**

14 8. Deny.

15 9. Deny.

16 10. Admit.

17 11. Are without knowledge or information sufficient to form a belief as to the
18 truth of the allegations of paragraph 11.

19 12. Are without knowledge or information sufficient to form a belief as to the
20 truth of the allegations of paragraph 12.

21 13. Are without knowledge or information sufficient to form a belief as to the
22 truth of the allegations of paragraph 13.

23 14. Deny the summary and affirmatively state that any such document speaks
24 for itself.

25 15. Deny the summary and affirmatively state that any such document speaks
26 for itself.

27 16. Deny.

28 17. Admit.

Material Misrepresentations And Omissions In CATHARON's 2013 Offering Materials

18. Deny the summary and affirmatively state that any such documents speak for themselves.

1. Ownership Of The Patents and Rights To the VADelta Technology

19. Deny.

20. Deny the summary and affirmatively state that any such documents speak for themselves.

21. Deny the summary and affirmatively state that any such documents speak for themselves.

22. Deny the summary and affirmatively state that any such documents speak for themselves.

23. Deny the summary and affirmatively state that any such documents speak for themselves.

24. Deny the summary and affirmatively state that any such documents speak for themselves.

25. Deny the summary and affirmatively state that any such documents speak for themselves.

26. Deny the summary and affirmatively state that any such documents speak for themselves.

27. Deny the summary and affirmatively state that any such documents speak for themselves.

28. Deny the summary and affirmatively state that any such documents speak for themselves.

29. Deny the summary and affirmatively state that any such documents speak for themselves.

30. Deny.

31. Deny the summary and affirmatively state that any such documents speak for themselves.

- 1 32. Deny the summary and affirmatively state that any such documents speak
2 for themselves.
- 3 33. Deny the summary and affirmatively state that any such document speaks
4 for itself.
- 5 34. Deny.
- 6 35. Deny the summary and affirmatively state that any such documents speak
7 for themselves.
- 8 36. Deny the summary and affirmatively state that any such document speaks
9 for itself.
- 10 37. Deny the summary and affirmatively state that any such document speaks
11 for itself.
- 12 38. Deny the summary and affirmatively state that any such document speaks
13 for itself.
- 14 39. Deny the summary and affirmatively state that any such document speaks
15 for itself.
- 16 40. Deny the summary and affirmatively state that any such document speaks
17 for itself.
- 18 41. Deny the summary and affirmatively state that any such document speaks
19 for itself.
- 20 42. Deny the summary and affirmatively state that any such document speaks
21 for itself.
- 22 43. Deny the summary and affirmatively state that any such document speaks
23 for itself.
- 24 44. Deny the summary and affirmatively state that any such document speaks
25 for itself.
- 26 45. Deny the summary and affirmatively state that any such document speaks
27 for itself.
- 28

1 46. Deny the summary and affirmatively state that any such document speaks
2 for itself.

3 47. Deny the summary and affirmatively state that any such document speaks
4 for itself.

5 48. Deny the summary and affirmatively state that any such document speaks
6 for itself.

7 **2. CATHARON'S Undisclosed Agreement To Share 50% Of Any**
8 **Profits Derived From The VADelta Technology With FD.**

9 49. Deny the summary and affirmatively state that any such documents speak
10 for themselves

11 50. Deny the summary and affirmatively state that any such document speaks
12 for itself.

13 51. Deny the summary and affirmatively state that any such documents speak
14 for themselves.

15 52. Deny the summary and affirmatively state that any such documents speak
16 for themselves.

17 53. Deny the summary and affirmatively state that any such document speaks
18 for itself.

19 54. Deny the summary and affirmatively state that any such document speaks
20 for itself.

21 **3. CATHARON'S Schedule For Launching VADelta Into The Market**

22 55. Deny.

23 56. Deny the summary and affirmatively state that any such document speaks
24 for itself.

25 57. Deny the summary and affirmatively state that any such document speaks
26 for itself.

27 58. Deny the summary and affirmatively state that any such document speaks
28 for itself.

- 1 59. Deny.
- 2 60. Deny.
- 3 61. Deny.
- 4 62. Deny the summary and affirmatively state that any such document speaks
5 for itself.
- 6 63. Deny the summary and affirmatively state that any such documents speak
7 for themselves.
- 8 64. Deny.
- 9 65. Deny.
- 10 66. Deny the summary and affirmatively state that any such document speaks
11 for itself.
- 12 67. Deny.
- 13 68. Deny the summary and affirmatively state that any such document speaks
14 for itself.
- 15 69. Deny the summary and affirmatively state that any such documents speak
16 for themselves.
- 17 70. Deny.
- 18 71. Deny.
- 19 **4. CATHARON'S Financial Statements**
- 20 72. Deny the summary and affirmatively state that any such document speaks
21 for itself.
- 22 73. Deny.
- 23 74. Deny the summary and affirmatively state that any such documents speak
24 for themselves.
- 25 75. Deny the summary and affirmatively state that any such documents speak
26 for themselves.
- 27 76. Deny the summary and affirmatively state that any such documents speak
28 for themselves.

1 77. Deny the summary and affirmatively state that any such documents speak
2 for themselves.

3 **VIOLATION OF A.R.S. § 44-1841**

4 **(Offer and Sale of Unregistered Securities)**

5 78. Deny.

6 79. Deny and deny that anything was required to be registered pursuant to
7 Articles 6 or 7 of the Securities Act and deny the implication that Arizona securities laws
8 applied.

9 80. Deny.

10 **V.**

11 **VIOLATION OF A.R.S. § 44-1842**

12 **(Transactions by Unregistered Dealers of Salesmen)**

13 81. Deny and deny that anyone was required to be registered pursuant to
14 Article 9 of the Securities Act and deny the implication that securities laws applied.

15 82. Deny.

16 **VI.**

17 **VIOLATION OF A.R.S. § 44-1991**

18 **(Fraud in Connection with the Offer or Sale of Securities)**

19 83. Deny and deny the implication that Arizona securities laws applied.

20 84. Deny.

21 **VII.**

22 **Control Person Liability Pursuant to ARS §§ 44-1999**

23 85. Admit.

24 86. Admit.

25 87. Deny the summary and affirmatively state that any such document speaks
26 for itself.

27 88. Deny and deny the implication that Arizona securities laws applied.

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VIII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

1. Deny and oppose the Order.

IX.

REQUESTED RELIEF

1. Deny and oppose the requested relief.

X.

HEARING OPPORTUNITY

1. Respondents requested a hearing.

AFFIRMATIVES DEFENSES

1. Respondents allege that the Division's Notice fails to state a claim upon which relief may be granted against the Respondents.
2. Respondent alleges that other persons or entities may be responsible for the acts complained of in the Notice.
3. Respondents are not lawyers or securities experts.
4. No Catharon participant has lost money.
5. At all times, Respondents acted truthfully, in good faith, legally, and for the best interests of Catharon.
6. Respondents relied upon Rule 506 of Regulation D, Code of Federal Regulations, Title 17, §230.506.
7. Pursuant to ARS 44-1999(A), Respondents had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.
8. Pursuant to ARS 44-1999(B), Respondents acted in good faith and did not directly or indirectly induce the act underlying the action.
9. The allegations of the Notice are barred by the statute of limitations.

HEURLIN SHERLOCK
1636 N. SWAN ROAD, STE. 200
TUCSON, ARIZONA 85712
520.319.1200

- 1 10. The Notice violates Rule 9(b), Arizona Rules of Civil Procedure.
2 11. The Arizona Corporation Commission lacks subject matter jurisdiction.
3 12. Respondents hereby reserve the right to plead further affirmative defenses,
4 including, but not limited to, those affirmative defenses set forth in Rules 8 and 12,
5 Arizona Rules of Civil Procedure, as may be justified by the facts determined during
6 discovery.

7 DATED March 13, 2014.

8 HEURLIN SHERLOCK

9 By: Bruce Heurlin
10 Bruce R. Heurlin
11 Thomas C. Piccioli
12 Attorneys for Respondents

13 ORIGINAL AND TEN (10) COPIES of the foregoing was sent by overnight mailed via
14 Federal Express on March 13, 2014, *to be filed on March 14, 2014*, with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 James D. Burgess (jburgess@azcc.gov)
20 Enforcement Attorney
21 Arizona Corporation Commission, Securities Division
22 1300 West Washington Street, Third Floor
23 Phoenix, AZ 85007
24
25
26
27
28

Exhibit 14

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 714-8120
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

March 20, 2014

Bruce Heurlin, Esq.
Heurlin Sherlock PC
1636 North Swan Road, Suite 200
Tucson, AZ 85712-4096

Re: Catharon Software Corporation, Betsy A. Feinberg and Michael A. Feinberg

Dear Bruce:

We are writing in another effort to avoid having to file a subpoena enforcement action pursuant to A.R.S. § 44-1825 regarding Michael Feinberg's improper invocation of the Fifth Amendment on March 4, 2014, when he sat for the examination under oath of the Custodian of Records for Catharon Software Corporation ("Catharon"). On March 7th, we wrote and provided you with several legal authorities demonstrating that it is improper for designated Catharon's Custodian of Records to invoke the Fifth Amendment and refuse to answer questions.¹

You responded with a letter dated March 13, 2014, in which you assert (1) "Catharon did not conduct business as a 'corporation' Catharon operated as a proprietorship"; and (2) "There is no custodian of records for Catharon because no person ever undertook those duties and obligations." Neither assertion is accurate, as Catharon's documents and even your own and Mr. Feinberg's prior statements demonstrate.

Erroneous Assertion No. 1: "Catharon did not conduct business as a 'corporation' Catharon operated as a proprietorship."

Your assertion that Catharon operated as a proprietorship and not as a corporation ignores the following facts, which are not subject to reasonable dispute:

- Your clients admitted in their Answer to the Temporary Cease and Desist Order and Notice of Opportunity for Hearing ("TC&D") that Catharon "is a corporation

¹ See, e.g., *Bellis v. United States*, 417 U.S. 85, 100 (1974) ("It is well settled that no [Fifth Amendment] privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be."); *Braswell v. United States*, 487 U.S. 99, 113 (1988) ("A custodian may not resist a subpoena for corporate records on Fifth Amendment grounds."); *United States v. Milligan*, 371 F. Supp.2d 1127, 1129-30 (D. Ariz. 2005) (same).

organized under the laws of the State of Delaware on March 8, 2002." TC&D at ¶ 2; Answer at ¶ 2.

- Catharon's four Offering Memoranda dated March 2002, May 2003, May 2010 and April 2013 each state, "The Company is a corporation formed in the state of Delaware on March 8, 2002...."
- The Delaware Secretary of State's records contain a Certificate of Incorporation for Catharon dated March 8, 2002, stating that the corporation has authorized 20 million shares of stock.
- Your clients admitted in their Answer to the TC&D that "From March 25, 2002 through the present, Betsy A. Feinberg has been a Director and the Chief Executive Officer of Catharon" and "Michael A. Feinberg has been a Director and the President and Treasurer of Catharon." TC&D at ¶¶ 3 and 4; Answer at ¶¶ 3 and 4.
- Catharon has over 340 shareholders according to the "Catharon Software Corporation Stock Ledger" your office produced on February 25, 2014.
- Catharon filed federal corporate tax returns each year from 2002 through 2011 using Internal Revenue Service Form 1120 - "U.S. Corporation Income Tax Return." Michael Feinberg signed Catharon's federal corporate tax returns under the penalty of perjury.
- Catharon filed Delaware tax returns as a corporation each year from at least 2005 through 2012. Michael Feinberg signed Catharon's Delaware corporate tax returns under the penalty of perjury.
- According to documents your office produced for Catharon, purportedly on March 24th of each year from 2003 to 2013, Mr. and Mrs. Feinberg executed a "Written Consent of a Majority of Shareholders Catharon Software Corporation in lieu of the Annual Shareholder Meeting." Each March 24th from 2003 to 2013, they elected themselves and their daughter, Jessica Feinberg, to serve as Catharon's corporate Directors.
- On December 1, 2013, Mr. and Mrs. Feinberg elected themselves and their son, Abraham Feinberg, to serve as Catharon's corporate Directors.

These facts demonstrate that Catharon operated as a corporation and not as an unincorporated proprietorship. Unincorporated proprietorships do not file Certificates of Incorporation with the Delaware Secretary of State, pay corporate income taxes, have corporate shareholders, and annually elect corporate directors as Catharon did.

These facts are beyond any reasonable dispute because they come exclusively from the Answer you filed on Catharon's behalf, Catharon's written communications to investors, Catharon's filings with the State of Delaware and the Internal Revenue Service, and Catharon's production of documents to the Arizona Corporation Commission ("Commission").

Your clients chose to operate Catharon as a corporation in order to take advantage of the benefits the corporate form offers. They cannot now disregard this form in order to shield Catharon's custodian of records from having to testify regarding its business records. See *In Re Two Grand Jury Subpoenas Duces Tecum*, 769 F.2d 52, 59 (2nd Cir. 1985) ("The appellant in the present case chose the corporate form in order to gain its attendant benefits; he cannot now disregard this form in order to shield its business records from production.").

Erroneous Assertion No. 2: *"There is no custodian of records for Catharon because no person ever undertook those duties and obligations."*

Your letter of March 13th asserts that no person has ever served as Catharon's custodian of records, but that assertion is directly contrary to prior statements Mr. Feinberg and you made to the Commission. Please recall that on January 27, 2014, Mr. Feinberg testified under oath in an Affidavit of Custodian of Records: "I am the duly authorized Custodian of Records of Catharon Software Corporation."

Please further recall that on February 20, 2014, you wrote in an email to the Division that Mr. and Mrs. Feinberg perform the role of custodian of records for Catharon. Finally, please recall that in your cover letter accompanying Catharon's document production on February 25, 2014, you wrote, "The documents herewith produced are produced by the custodian of records of Catharon Software Corporation....."

How do you explain the material inconsistencies between these prior statements by Mr. Feinberg and you and your clients' present assertion that Catharon does not have, and has never had, a custodian of records? If you have an explanation, please provide it so we may try to understand these inconsistent and seemingly irreconcilable statements you and your clients have made.

Finally, your March 13th letter takes issue with the Commission's proposal that Catharon appoint an alternate custodian of records who will testify if Mr. or Mrs. Feinberg cannot do so without incriminating themselves. The Commission's proposal comports with well-established law and procedure. As the Second Circuit explained nearly 30 years ago, if a corporation's custodian of records would incriminate himself if he were to act to produce the company's records,

[T]he corporation must appoint some other employee to produce the records, and if no existing employee could produce records without incriminating himself by such an act, then *the corporation may be required to produce the records by supplying an entirely new agent who has no previous connection with the corporation* that might place

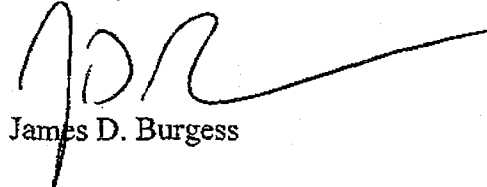
him in a position where his testimonial act of production would be self-incriminating.

In Re Two Grand Jury Subpoenas Duces Tecum, 769 F.2d 52, 57 (2nd Cir. 1985), citing *United States v. Barth*, 745 F.2d 184, 189 (2nd Cir. 1984), *cert. denied*, 470 U.S. 1004 (1985); *see also In Re Grand Jury No. 86-3 (Will Rogers Corporation)*, 816 F.2d 569, 574 (11th Cir. 1987) (same).

We again request that your clients reconsider their position that Catharon does not have to designate an authorized custodian of records who will testify regarding Catharon's document production in response to the Commission's Subpoena Duces Tecum. If Mr. and Mrs. Feinberg believe they would incriminate themselves by testifying in what you described as their roles as Catharon's custodian of records, the law requires that Catharon appoint an alternate custodian of records who will testify.

Please let us know by March 27, 2014: (1) whether Mr. Feinberg, in his capacity as Catharon's Custodian of Records, will withdraw his Fifth Amendment objections and agree to testify in that capacity regarding Catharon's response to the Commission's Subpoena Duces Tecum; or (2) alternatively, whether Catharon will appoint a different Custodian of Records who will testify.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JDB', followed by a long horizontal flourish extending to the right.

James D. Burgess

Cc: Julie A. Coleman, Chief Counsel of Enforcement
Special Investigator Annalisa Weiss

Exhibit 15



HEURLIN SHERLOCK

1636 N. Swan Road, Ste. 200
Tucson, Arizona 85712-4096
Telephone 520.319.1200
Facsimile 520.319.1221
www.AZtopLawyers.com
bheurlin@AZtopLawyers.com

March 26, 2014

James D. Burgess
Enforcement Attorney
Arizona Corporation Commission, Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007

Re: *Catharon Software Corporation, Betsy A. Feinberg and Michael A. Feinberg*

Dear Jamie:

This responds to your March 20, 2014, letter.

Catharon

Catharon was formed as a corporation and has, in certain ways, acted as a corporation, and in other ways, as a proprietorship. Despite its formation, whether Catharon now is a corporation or disregarded that legal entity and acted as a proprietorship, is a mixed issue of fact and law.

Catharon Documents

The arguments and case law cited in your letter miss the real issue at this time.

The issue is not about Catharon producing documents. That was done. Catharon never asserted the Fifth Amendment and never refused to produce documents.

Catharon fully complied with the Securities Division's subpoena and produced all subpoenaed documents.

The real issue now is that the Securities Division, Arizona Corporation Commission, State of Arizona (collectively the State) seeks to have one of the Feinbergs testify to the business records foundation so that the State can move into evidence the documents that Catharon produced at a hearing and/or criminal prosecution against the Feinbergs.

Of course, this issue goes way beyond production of documents. The State wants to call the Feinbergs as witnesses against each other, not to produce documents, but to use the



HEURLIN SHERLOCK

James D. Burgess
March 26, 2014
Page 2 of 2

Feinbergs to lay the business records foundation so that Catharon documents will be admitted into evidence against the Feinbergs.

I cannot imagine that, in a criminal prosecution of the defendant Feinbergs, any judge would allow the prosecutor to call a defendant Feinberg and force that defendant to testify at the Feinbergs' trial.

The Feinbergs are not going to try to find someone who knows nothing about Catharon documents, but is willing to testify as to the business records foundation.

Sincerely,

HEURLIN SHERLOCK

A handwritten signature in cursive script, appearing to read 'Bruce Heurlin'.

Bruce R. Heurlin

cc: Julie A. Coleman, Chief Counsel of Enforcement
Annalisa Weiss, Special Investigator

Exhibit B

COPY

ARIZONA CORPORATION COMMISSION

James D. Burgess (Az. Bar. No. 014978)
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007
Tel: (602) 542-0171
Fax: (602) 714-8120
Email: jburgess@azcc.gov

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF ARIZONA

COUNTY OF MARICOPA

CV 2014-008856

ARIZONA CORPORATION COMMISSION,)
)
Plaintiff,)
)
v.)
)
CATHARON SOFTWARE CORPORATION, a)
Delaware Corporation,)
)
Defendant.)

Case No. _____

ORDER TO SHOW CAUSE

Having reviewed the pleadings in this matter and good cause appearing,

IT IS HEREBY ORDERED that Defendant Catharon Software Corporation ("Catharon")

shall appear before this Court on June 19, 2014, at 1:30 [a.m.(p.m.)]
before Honorable David Conanan, 201 West Jefferson, Central Court Building 401, Phoenix, Arz
and show cause why the Court should not order it to: (1) produce an authorized Custodian of
Records to appear before an officer designated by the Arizona Corporation Commission and give
evidence by testifying regarding Catharon's document production in response to the Subpoena
Duces Tecum the Commission served on it dated January 3, 2014; and (2) reimburse the
Commission for its reasonable expenses, including attorneys' fees, incurred in this action pursuant
to A.R.S. § 44-1825.

.... This is a Return hearing only. No evidence will be taken.

....

1 Dated this 12^m day of JUN, 2014.

2
3 Michael J. Herrod

4 Judge of the Maricopa County Superior Court
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Exhibit C

1 THE LAW FIRM OF
2 **HEURLIN SHERLOCK**
3 1636 N. SWAN ROAD, STE. 200
4 TUCSON, ARIZONA 85712-4096
5 TEL 520.319.1200
6 FAX 520.319.1221

7 Bruce R. Heurlin, SBN 003214, bheurlin@aztoplawyers.com
8 Thomas C. Piccioli, SBN 012546, tpiccioli@aztoplawyers.com
9 Attorneys for Defendant

10 **SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **COUNTY OF MARICOPA**

12 ARIZONA CORPORATION COMMISSION,
13 Plaintiff,

14 vs.

15 CATHARON SOFTWARE CORPORATION,
16 a Delaware corporation,
17 Defendant.

18 **Case No. CV2014-008856**

19 **MOTION TO DISMISS**
20 **COMPLAINT**
21 **SUBPOENA ENFORCEMENT**
22 **ACTION**

23 Catharon Software Corporation moves to dismiss the Complaint Subpoena
24 Enforcement Action.

25 A. Introduction.

26 This case involves the application of the body of law commonly referred to as the
27 “collective entity doctrine”. That doctrine has sought to resolve the conflict between the
28 rights of governmental agencies to compel the production of business records and the
Fifth Amendment privilege against self-incrimination.

B. Facts.

The Arizona Corporation Commission (the “Commission”) issued the Subpoenas
referenced in paragraph 7 of its Complaint. Catharon was organized as a corporation and
there are only two people who are involved in the conduct of Catharon’s business, Betsy
and Michael Feinberg. The Feinbergs asserted their Fifth Amendment privileges against
self-incrimination with respect to the Subpoenas. The Commission cannot allege that the
Feinbergs are *not* the target of a criminal investigation.

1 Undersigned counsel submitted a letter dated February 25, 2014 on behalf of
2 Catharon and the Commission attached that letter to its Complaint as Exhibit 8. The
3 Exhibit 8 letter covered all records addressed by the Subpoenas (the "Catharon
4 Records"). The closing sentence in Exhibit 8 states:

5 *"This fully responds to the subpoenas directed to the custodian of records for Catharon
6 Software Corporation, Betsy Feinberg and Michael Feinberg."*

7 Catharon agreed to stipulate that the records provided to the Commission may be entered
8 into evidence by the Commission without any evidentiary foundation. Exhibit 8 to
9 Complaint. To formalize that, attached is a Stipulation to Admission of Records.
10 However, the Commission wants someone to *testify orally* regarding the records provided
11 in conjunction with the Subpoenas. The Commission alleges that it is entitled to have
12 someone *testify orally* with respect to the evidentiary foundation of the Catharon
13 Records. The Commission has no authority to compel *oral testimony* in the face of a
14 Fifth Amendment assertion of privilege against self-incrimination.

15 C. Law.

16 Federal case law on the subject is explicit. Going back in a line of cases dating to
17 1911, The United States Supreme Court drew and maintained a bright line between *the*
18 *act of producing* documents, and *oral testimony* regarding documents. The Commission
19 is entitled to the former, it is legally precluded from the latter. In Wilson v. United States,
20 31 S.Ct. 538, 546 (1911), Mr. Justice Hughes delivered the opinion of the Court, holding
21 with respect to a person holding corporate books: *"They may decline to utter upon the*
22 *witness stand a single self-incriminating word."*

23 The Wilson opinion was further supported and expanded upon by the Supreme
24 Court in Curico v. United States, 354 U.S. 118, 123-124 (1957):

25 "A custodian, by assuming the duties of his office, undertakes the
26 obligation to produce the books of which he is custodian in response to a
27 rightful exercise of the State's visitorial powers. But he cannot lawfully
28 be compelled, in the absence of a grant of adequate immunity from
prosecution, to condemn himself by his own *oral testimony*."

1 [Emphasis added].

2 Finally, in *Braswell v. United States*, 108 S.Ct. 2284, 2293, (1988), the Supreme Court
3 stated:

4 "The *Curcio* Court made clear that with respect to a custodian of a
5 collective entity's records, *the line drawn was between oral testimony*
6 *and other forms of incrimination.*"

7 [Emphasis added].

8 The *Braswell* Court then cited *Curico* by reiterating the quotation set forth above, and the
9 *Braswell* Court italicized the words *oral testimony* in the quotation it reproduced from
10 the *Curico* opinion.

11 C. Argument.

12 The Commission wants Catharon to appoint a Custodian of Records to give *oral*
13 *testimony* regarding those records. The only people who have first-hand knowledge
14 regarding the records are the Feinbergs. The Feinbergs invoked their Fifth Amendment
15 privilege against self-incrimination. Catharon has no money to retain a third party, and
16 even if it did, it would be an exercise in futility. If Catharon hires or designates a third-
17 party Custodian of Records, that party will not be able to provide the foundation
18 testimony that the Commission is seeking. The Feinbergs are not legally required to
19 provide self-incriminating *oral testimony* to a third party, in order that the third party can
20 repeat that *oral testimony* to the Commission. The United States Supreme Court has
21 addressed the issue explicitly in case law spanning over a hundred years. The
22 Commission can compel *physical production* of the documents; the Commission cannot
23 compel *oral testimony*, and there is no applicable case law to the contrary.

24 D. Conclusion.

25 Based upon the foregoing legal authorities, the Commission's Complaint fails to
26 state a claim upon which relief can be granted. This Court cannot compel the Feinbergs to
27 provide self-incriminating, *oral testimony*, either directly or indirectly, in order to comply
28 with the Subpoenas. Catharon provided the documents, it complied with the Subpoenas,

HEURLIN SHERLOCK
1636 N. SWAN ROAD, STE. 200
TUCSON, ARIZONA 85712
520.319.1200

1 and the Commission has not provided a single legal authority in support of its demand
2 that the Feinbergs provide *oral testimony*.

3 WHEREFORE, Catharon requests that this Court dismiss the Complaint with
4 prejudice, and order the Commission to pay Catharon's reasonable costs and attorney
5 fees incurred herein.

6
7 DATED June 18, 2014.

8 HEURLIN SHERLOCK

9 By: Bruce R. Heurlin
10 Bruce R. Heurlin
11 Thomas C. Piccioli
12 Attorneys for Defendant

13 ORIGINAL of foregoing filed Via AZTurbo Court System on June 18, 2014, with:

14 Clerk of the Superior Court
15 Maricopa County Superior Court
16 201 West Jefferson
Phoenix, Arizona 85003

17 COPY of the foregoing delivered via AZTurbo Court System on June 18, 2014, to:

18 Superior Court Judge
19 Maricopa County Superior Court
20 201 West Jefferson
21 Phoenix, Arizona 85003

22 COPY of the foregoing emailed and mailed on June 18, 2014, to:

23 James D. Burgess (jburgess@azcc.gov)
24 Enforcement Attorney
25 Arizona Corporation Commission, Securities Division
26 1300 West Washington Street, Third Floor
Phoenix, AZ 85007

1 THE LAW FIRM OF
2 **HEURLIN SHERLOCK**
3 1636 N. SWAN ROAD, STE. 200
4 TUCSON, ARIZONA 85712-4096
5 TEL 520.319.1200
6 FAX 520.319.1221

7 Bruce R. Heurlin, SBN 003214, bheurlin@aztoplawyers.com
8 Thomas C. Piccioli, SBN 012546, tpiccioli@aztoplawyers.com
9 Attorneys for Respondents

10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 In the matter of:

12 Catharon Software Corporation, a Delaware
13 corporation,

14 Betsy A. Feinberg and Michael A. Feinberg,
15 husband and wife,

16 Respondents.

DOCKET NO. S-20905A-14-0061

**STIPULATION TO
ADMISSION OF RECORDS**

17 Catharon Software Corporation, a Delaware Corporation ("Catharon"), hereby
18 stipulates and agrees that the records delivered to the Securities Division of the Arizona
19 Corporation Commission pursuant to the three (3) Subpoenas Duces Tecum dated
20 January 3, 2014 (collectively the "Records") may be entered and admitted into evidence
21 at any proceeding in the above-styled matter, without any evidentiary foundation.
22 Catharon hereby waives any objection to the admission of the Records in any proceeding
23 in the above-styled matter.

24 DATED June 18, 2014.

25 HEURLIN SHERLOCK

26 By: 

27 Bruce R. Heurlin
28 Thomas C. Piccioli
Attorneys for Respondents

HEURLIN SHERLOCK
1636 N. SWAN ROAD, STE. 200
TUCSON, ARIZONA 85712
520.319.1200

1 ORIGINAL AND TEN (10) COPIES of the foregoing was sent by overnight mailed via
2 Federal Express on June 18, 2014, *to be filed on June 19, 2014*, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

6 COPY mailed on June 18, 2014, to:

7 Mark Preny
8 Administrative Law Judge
9 Hearing Division
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007-2996

12 Matthew Neubert, Director
13 Securities Division
14 Arizona Corporation Commission
15 1300 West Washington Street
16 Phoenix, Arizona 85007

16 COASH & COASH, INC.
17 Court Reporting, Video and Videoconferencing
18 1802 North 7th Street
19 Phoenix, Arizona 85006

19 COPY emailed and mailed on June 18, 2014, to:

20 James D. Burgess (jburgess@azcc.gov)
21 Enforcement Attorney
22 Arizona Corporation Commission, Securities Division
23 1300 West Washington Street, Third Floor
24 Phoenix, AZ 85007
25
26
27
28